

1                   UNITED STATES BANKRUPTCY COURT  
2                   DISTRICT OF DELAWARE

3           IN RE:    Chapter 11  
4           W.R. GRACE & CO., et al.,                                  Case No. 01-01139 (JKF)  
5    Jointly Administered  
6    Debtors.    June 27, 2005 (12:12 p.m.)  
7    Wilmington

7    TRANSCRIPT OF PROCEEDINGS  
8    BEFORE THE HONORABLE JUDITH K. FITZGERALD  
9    UNITED STATES BANKRUPTCY COURT JUDGE

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23    Proceedings recorded by electronic sound recording;  
24    transcript produced by transcription service.  
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1 THE COURT: Okay, W.R. Grace, Bankruptcy No. 01-  
2 11396. Are the parties connected by phone?

3 UNIDENTIFIED SPEAKER: Yes.

4 THE COURT: Okay. I have telephonic appearances  
5 listed by March Coleman, Tiffany Cobb, Michael Davis, Bruce  
6 Levin, Elizabeth DeCristofaro, Jonathan Brownstein, David  
7 Parsons, Jack Cohn, Allyn Danzeisen, Darrell Scott, Sarah  
8 Edwards, Gary Becker, Edward Westbrook -- Mr. Bernick, but  
9 he's here -- Jonathan Friedland, Lori Sinanyan, Michael Brown  
10 -- Pardon me, is there a court call operator on?

11 TELEPHONE OPERATOR: Yes, there is.

12 THE COURT: There's some -- I don't know what it  
13 is, but it sounds like noise or typing or background  
14 something.

15 TELEPHONE OPERATOR: Okay.

16 THE COURT: Thank you. Michael Brown, Stafano  
17 Calogero, Barbara Seniawski, and Christopher Candon. I  
18 apologize for not pronouncing all the names properly. I'll  
19 take entries of appearances from those of you in court,  
20 please.

21 MR. BERNICK: David Bernick for Grace and with me  
22 is Janet Baer, David Carickhoff, and Jonathan Friedland.

23 MR. PASQUALE: Kenneth Pasquale from Stroock &  
24 Stroock & Lavan for the Creditors Committee.

25 MR. HURFORD: Mark Hurford of Campbell & Levine on

1 behalf of the Asbestos PI Committee along with Ron Reinsel  
2 from Kaplin & Drysdale.

3 MR. BAENA: May it please the Court. Good  
4 afternoon, Judge. Scott Baena and Jay Sakalo on behalf of  
5 the Property Damage Committee.

6 MR. FRANKEL: Good afternoon, Your Honor. Roger  
7 Frankel for David Austern the Future Claimants  
8 Representative.

9 MR. CHEHI: Good afternoon, Your Honor. Mark Chehi  
10 from Sadden Arps, and I have here my partner, Henry  
11 Wasserstein from our New York office to address the Sealed  
12 Air settlement matter.

13 MR. SULLIVAN: Good afternoon, Your Honor. Bill  
14 Sullivan, Delaware counsel for the ZAI claimants.

15 THE COURT: Mr. Bernstein. I'm sorry, I don't know  
16 where that came from, but --

17 MR. BERNICK: Well, Donald Bernstein was a  
18 classmate of mine in law school, but --

19 THE COURT: I apologize.

20 MR. BERNICK: Your Honor, there's a relatively  
21 lengthy agenda, but I think many of the matters are  
22 uncontested or administrative in nature. There are two  
23 substantial matters: One is the motion to extend  
24 exclusivity, and the second is the matter of the case  
25 management order in connection with the property damage

1 claims. Ms. Baer will be addressing all of the matters up to  
2 those last two matters, and I'll address the Court with  
3 respect to those last two matters. So, if we can proceed on  
4 that basis?

5 THE COURT: All right.

6 MR. BERNICK: Ms. Baer with address the Court.

7 MS. BAER: Good afternoon, Your Honor. Your Honor,  
8 with respect to agenda item number 1, which was the motion of  
9 the Massachusetts Department of Environmental Protection from  
10 relief from the stay, as you may recall there was a setoff  
11 issue there. The Massachusetts Department of EPA has filed a  
12 notice of withdrawal of their motion, and that can now be  
13 taken off the calendar. It is now moot.

14 THE COURT: All right, thank you.

15 MS. BAER: Your Honor, item number 2 is the second  
16 supplemental application of David Austern, the Future  
17 Claimants Representative to extend the terms of the  
18 employment of CIBC World Markets Corp. A certificate of no  
19 objection was filed on that matter.

20 THE COURT: Yes, I have CNOs on items 2, 3, and 4.  
21 I have not had an opportunity to get the orders entered -- I  
22 know there are others, but just looking briefly at the  
23 agenda, on items 2, 3, and 4, those orders will be entered.

24 MS. BAER: Your Honor, with respect to items 3 --  
25 Item number 3 I do have the order here in court. If it would

1 be helpful, I can hand it up and we can get it entered right  
2 now. I don't know what that will do to you procedurally.

3 THE COURT: It's probably easier if I just indicate  
4 that they should all be entered electronically, Ms. Baer, but  
5 I'll find out and get back to you as soon as Mona lets me  
6 know how they prefer it.

7 MS. BAER: Your Honor, that takes us to item number  
8 4, which was the motion of the debtors for authority to  
9 retain its former general counsel David Seagel as a  
10 consultant. Your Honor, we submitted a certificate of  
11 counsel on that one. There was one inquiry. The Asbestos  
12 Property Damage Committee asked us if we would supply them  
13 with a monthly statement of Mr. Seagel's hours. We indicated  
14 we would do so, in fact, it's a monthly statement that will  
15 indicate his hours as well as a little breakdown of the  
16 different matters he's working on. With that, Your Honor, we  
17 revised the order to include providing that to all of the  
18 committees, not just the PD Committee, as well as the U.S.  
19 Trustee and would ask that that order be entered.

20 THE COURT: Yes, 4 can be entered. Okay, 2 and 3  
21 apparently are already in progress of being entered, and 4  
22 will be now, so. Okay, with respect to 5, if you have the  
23 order here, I'll take that one.

24 MS. BAER: I do.

25 THE COURT: Thank you. Okay that's entered.

1 MS. BAER: Your Honor, item number 6 you already  
2 entered that order. That was on the Lake Charles Union  
3 Pension Plan.

4 THE COURT: All right.

5 MS. BAER: That takes us to item number 7, Your  
6 Honor, which is the quarterly fee applications. I believe  
7 that the Asbestos Property Damage Committee filed a response  
8 to the fee examiner's report, and I will turn the podium over  
9 to them.

10 THE COURT: Mr. Baena.

11 MR. BAENA: May it please the Court. Scott Baena  
12 on behalf of the Property Damage Committee. Judge, I hate to  
13 take up the Court's valuable time on a matter that doesn't  
14 entail a lot of money. And that certainly is the case in  
15 respect of this objection, if you will, or recommendation by  
16 the fee examiner in respect of our fees. However, we thought  
17 the point was an important one, and from time to time, people  
18 have been bringing these kinds of points to the Court, and we  
19 thought this was just such an instance where we should talk  
20 to the Court again. Judge, we thought it was very sensible  
21 and thoughtful, early in this case, to insure that there was  
22 going to be within our firm a consistent number and array of  
23 people involved in this matter. We think that by that  
24 consistency, you minimize the expense of the representation  
25 by the efficiencies that you create over time, and the

1 familiarity that people have that they gain over time. And  
2 amongst the professionals that that applies to, in the case  
3 of our firm, are paraprofessionals who are valued members of  
4 our restructuring and insolvency team, who are highly  
5 skilled, indeed some of them have even graduated law school,  
6 and we have asked them to do a number of things including,  
7 which we thought was of paramount importance, avoiding the  
8 necessity for every one of the lawyers who's involved in this  
9 case to review every pleading. And we have them parse out  
10 the pleadings to the various people based upon subject  
11 matter, based upon prior involvement in the type of subject  
12 or subject matter that is the matter engendered by the  
13 pleadings. Indeed, if you review the monthly and quarterly  
14 bills submitted by my firm, you'll see that I have very  
15 little time, personally, that's billed for reviewing  
16 pleadings, and it's because of this process that we employ  
17 that insures that matter is assigned to the right person for  
18 further handling. We note and commend Kirkland & Ellis for  
19 the same process, indeed, we suspect a number of firms  
20 involved do. But for some reason, the Kirkland firm and our  
21 firm are the only two firms that were singled out on this  
22 particular occasion for these charges, which again, are not a  
23 lot of money. I think in the case of Kirkland it was \$6,000  
24 on a \$2 million quarterly fee app, and in our case it was  
25 \$4,000 on a \$200,000 fee app. The examiner's position on

1 this is that the function of these paraprofessionals is  
2 ministerial. And nothing could be further from the truth  
3 unless we don't understand what he means by ministerial. We  
4 think it makes entirely good sense to create efficiencies  
5 wherever we can, and that would include expanding the use of  
6 paraprofessionals to insure that we don't duplicate the  
7 delivery of legal services by lawyers within the law firm,  
8 and that's what this dispute is all about.

9 THE COURT: Anyone present for the fee examiner?

10 MR. SMITH (TELEPHONIC): Yes, Your Honor, this is  
11 Warren Smith, the fee examiner.

12 THE COURT: Go ahead, Mr. Smith.

13 MR. SMITH (TELEPHONIC): I do not dispute anything  
14 that was just said. However, that's not what this dispute is  
15 about, Your Honor. The dispute is not about efficiencies nor  
16 is it about having paralegals parse their pleadings and  
17 allocate out those pleadings that should be read by certain  
18 people. If you note Exhibit A to our final report regarding  
19 Bilzin, Sumberg, it identifies a number of charges, and yes,  
20 these were all charges or fees that were incurred by  
21 paralegals, but we don't -- we did not categorically deny or  
22 recommend disallowance of the fees by these paralegals. It  
23 was just for those services where we felt that these  
24 paralegals were going across the line and doing essentially  
25 secretarial tasks. If you look on Exhibit A, Your Honor, to

1 again, our final report regarding Bilzin, Sumberg, on  
2 12/17/04 the timekeeper identified as BAB billed for,  
3 quote, "create shipping label and send via Fed Ex", and,  
4 quote, "create labels for folders and redwell to insert  
5 pleadings". A lot of the other charges on Exhibit A are for  
6 printing documents, and so, Your Honor, we have no objection  
7 to paralegals performing the tasks for which paralegals are  
8 appropriate, and I think it was very eloquently explained how  
9 paralegals can be used efficiently. However, some of these  
10 charges we believe that were in this application involve  
11 paralegals performing tasks for which secretaries are more  
12 appropriate, and those are the charges to which we  
13 recommended disallowance, Your Honor.

14 THE COURT: Okay, Mr. Baena?

15 MR. BAENA: I'm going to let Mr. Sakalo, if you  
16 don't mind, talk about the specific charges.

17 THE COURT: All right, Mr. Sakalo.

18 MR. SAKALO: Good afternoon, Your Honor. Your  
19 Honor, with respect to the two particular charges that Mr.  
20 Smith just raised, he is correct as to those two, but if you  
21 look at the rest of the specific charges listed in his  
22 Exhibit A, that is the project that Mr Baena was explaining  
23 before. That is what our paraprofessionals, we call project  
24 assistants, do on a daily basis for us in managing the  
25 pleadings that come in. The descriptions of them perhaps

1 aren't as descriptiveness as Mr. Smith might wish, and we did  
2 include in our initial response to his initial report a  
3 description of what they do in more detail, and he again  
4 didn't find that to be persuasive, and Mr. Baena just  
5 specified exactly what it is that our paraprofessionals do,  
6 and we believe, in accordance with what other firms in this  
7 case are doing, other firms in Delaware are doing on these  
8 mega cases, that these are compensable activities.

9 THE COURT: Well, what other firms are doing in  
10 Delaware may or may not be the issue. What you do with your  
11 non-bankruptcy clients may be more of an issue. I mean  
12 that's what busy beaver tell me.

13 MR. SAKALO: This is something that we do -- have  
14 instituted in our litigation group for mega cases, as well,  
15 Your Honor, this is not something that we --

16 THE COURT: Well, what other cases? Do you have  
17 mega-non-bankruptcy cases? I mean where's the comparison  
18 that I have to follow?

19 MR. SAKALO: Yes, yes, Your Honor. Our litigation  
20 matters that are pending where we have electronic filing,  
21 this is something that we've instituted throughout our firm  
22 for all of our cases, and it's something that's regularly  
23 charged to our clients.

24 THE COURT: What are the nature, for example,  
25 subject matter-wise of other mega cases that are not

1 litigation -- or are not bankruptcy cases?

2 MR. SAKALO: For instance, we're defending a  
3 fraudulent transfer action pending in the Southern District  
4 of Ohio where there is, you know, on any given day five, six,  
5 seven, eight different pleadings that are filed in that  
6 action, and our paraprofessionals do the same type of work on  
7 those cases. We have pending actions in New York. Other  
8 actions in Delaware, we do this as well. Those are on non-  
9 bankruptcy matters, Your Honor.

10 THE COURT: Okay, I will take a look at this after  
11 court and decide when I have a chance to review each specific  
12 item as to whether I think it's appropriate. Frankly, the  
13 fact that somebody's creating a label, should not be charged  
14 the paralegal rates -- at the highest paralegal rates. It  
15 just shouldn't be.

16 MR. SAKALO: We agree with --

17 THE COURT: In fact, it shouldn't be charged at  
18 all.

19 MR. SAKALO: We agree. That particular entry, we  
20 overlooked that one, and we agree as to that one, but you'll  
21 see on Exhibit A, that's the only entry of that nature.

22 THE COURT: All right. I will take a look at  
23 Exhibit A later and make a decision. Okay.

24 MR. SAKALO: Thank you, Your Honor.

25 MR. SULLIVAN: Good afternoon, Your Honor. Bill

1 Sullivan on behalf of the ZAI claimants. Your Honor, I rise  
2 only because in reviewing the certification of counsel this  
3 morning with respect to the quarterly fees, I noted that it  
4 omitted the new firms of both Darrell Scott and myself. We  
5 both changed firms last fall during this fifteenth quarterly  
6 period, and I have not had a chance to raise that issue with  
7 Mr. Smith yet because I only caught it this morning. So,  
8 Your Honor, I would like the opportunity to review that with  
9 Mr. Smith and find out what happened with respect to the two  
10 new firms.

11 THE COURT: Okay. That makes sense. Mr. Smith,  
12 did you get the fee applications properly? Is it just that  
13 somehow or other they were deleted from the order?

14 MR. SMITH (TELEPHONIC): Your Honor, I think we'll  
15 have to discuss this off the record, Your Honor.

16 MR. SULLIVAN: This would be the first quarter that  
17 the new firms would have appeared, Your Honor, so, you know,  
18 I'll work it out with Mr. Smith, and we can advise the Court.

19 THE COURT: Well, you need to advise whoever is  
20 preparing the order. The fee applications were properly  
21 filed and served and Mr. Smith has reviewed them? They're  
22 just missing from the order?

23 MR. SMITH (TELEPHONIC): Well, okay. Your Honor,  
24 we've not reviewed them. The reason that we have not  
25 reviewed them, I don't know.

1                   THE COURT: Okay. I'm sorry, Mr. Sullivan, who are  
2 you representing? ZAI plaintiffs.

3                   MR. SULLIVAN: ZAI, yes.

4                   THE COURT: Okay. Has there been an order that  
5 appoints counsel for ZAI plaintiffs? Have you been  
6 substituted formally on the record?

7                   MR. SULLIVAN: Your Honor, I have been and my prior  
8 firm I was billing and was paid, and then when I changed  
9 firms, we reviewed that with Grace and his counsel, and  
10 everybody agreed that it fell within the prior order, so,  
11 that we would continue to be paid at my new firm as Delaware  
12 counsel. So, it is subject to an existing order, Your Honor.

13                  THE COURT: Well, I don't know how I get you paid  
14 if you're not on the record anywhere in the new firm. I  
15 mean, I need an order that appoints you in the new firm;  
16 don't I?

17                  MR. SULLIVAN: Your Honor, we reviewed this in  
18 February, and the initial appointment order for both Mr.  
19 Scott and myself identified us personally and therefore --

20                  THE COURT: That's fine, but don't I need a new  
21 firm and a new address somewhere on the record in order to  
22 know -- I mean, if you haven't made that substitution, our  
23 records aren't even going to be sending you pleadings in the  
24 correct place.

25                  MR. SULLIVAN: We made those substitutions, Your

1 Honor. I mean we've been receiving pleadings, we filed the  
2 notice --

3 THE COURT: Okay. I was trying to get to whether  
4 or not the record was correct as to where you are now lodged.  
5 So the order that appointed you referred specifically to you  
6 and Mr. Scott --

7 MR. SULLIVAN: Right.

8 THE COURT: -- not to your firm.

9 MR. SULLIVAN: Right.

10 THE COURT: Okay. So that's not an issue.

11 MR. SULLIVAN: That's my understanding, Your Honor.  
12 We had discussions and worked that out, and in fact the  
13 monthlies have been paid, as I understand it, from this  
14 quarterly period. So -- Your Honor, I guess -- counsel  
15 suggested, if we just discuss it with Mr. Smith and either  
16 submit a new order or a revised order with respect to these  
17 two firms.

18 THE COURT: Yeah, well, he has to review them  
19 obviously, so yes, I need to get an order that deals with  
20 these two issues, and I'm going to have to make a ruling on  
21 Mr. Baena's anyway, so, it's going to take me a little bit of  
22 time to figure out what the fees are going to be. So, who is  
23 submitting in this case; is it Mr. Smith or is it the debtor  
24 that's preparing these orders?

25 MR. CARICKHOFF: Your Honor, David Carickhoff on

1 behalf of the debtors. Mr. Smith has been giving us the  
2 attachment to the omnibus order. I've always drafted the  
3 order itself but the Exhibit A which sets forth the requested  
4 fees and the examiner's recommendation has always been  
5 prepared by the fee auditor.

6 THE COURT: Okay, well, that portion, Exhibit A,  
7 except for Mr. Baena and I guess this issue Mr. Sullivan's  
8 raising can be entered. So, perhaps what I can do is get a  
9 partial order entered with respect to everybody who's agreed  
10 with his recommendations, and then a supplemental order once  
11 you've come to some agreement with respect to those fees. So  
12 --

13 MR. CARICKHOFF: I guess the order that we have to  
14 hand up to Your Honor that was submitted under certification  
15 of counsel, Your Honor can strike or put a notation in it  
16 that Mr. Baena's firm's fees are under advisement, and I  
17 think everybody else can go forward, and Mr. Sullivan can  
18 submit a certification of counsel with respect to his fees  
19 and Mr. Scott's firm's as well.

20 MR. SULLIVAN: I would be glad to do that, Your  
21 Honor.

22 THE COURT: Mr. Baena, how about -- if you're  
23 telling me that the issue that is contested is \$4,000, so  
24 that I don't hold up your whole fee, how about if I award all  
25 but the \$4,000 that's contested, and then we can do a

1 supplemental later.

2 MR. BAENA: That's fine.

3 THE COURT: All right. Can you fix this order  
4 before you hand it up.

5 MS. BAER: That's what's in there.

6 THE COURT: It is in there now?

7 MR. CARICKHOFF: The recommended amount does not  
8 include the 4,000 that's in dispute.

9 THE COURT: All right. So everybody's fees are  
10 okay except that Mr. Sullivan's aren't in there, and Mr.  
11 Baena's I need to address the \$4,000 worth. Is that correct?  
12 Okay. Let me make a note so I know what I'm doing here.

13 MR. SULLIVAN: And, Your Honor, with respect to my  
14 fees, I'll also do it on behalf of Mr. Scott.

15 THE COURT: Okay, that's fine. I'm sorry, what  
16 agenda number is this? I'm sorry.

17 MS. BAER: It's agenda number 7.

18 THE COURT: Seven, thank you.

19 MS. BAER: And I have the order here, Your Honor.

20 THE COURT: All right. So, on Sullivan and Scott  
21 fees, I'm going to get a certification of counsel after, Mr.  
22 Smith, you've had an opportunity to review them.

23 MR. SMITH (TELEPHONIC): Yes, Your Honor.

24 THE COURT: All right, so, in this instance, with  
25 respect to Sullivan and Smith, I will need an order on a

1 certification of counsel that Mr. Sullivan will prepare.

2 This one won't be coming from the debtor; is that correct?

3 MS. BAER: That's correct.

4 THE COURT: All right, and Mr Baena, I'll give you  
5 a ruling so there will be some order that will be entered  
6 with respect to that.

7 MR. BAENA: Thank you, Your Honor.

8 THE COURT: Okay. I'll take the order now, Ms.  
9 Baer. Thank you. Okay, that order is entered.

10 MS. BAER: Your Honor, agenda item number 8 is  
11 exclusivity which we'd like to skip for now while we get  
12 these other matters taken care of.

13 THE COURT: That's fine.

14 MS. BAER: Agenda --

15 MR. SMITH (TELEPHONIC): Your Honor, this is Warren  
16 Smith. If I could be excused?

17 THE COURT: Yes, sir, thank you.

18 MR. SMITH (TELEPHONIC): Thank you, Your Honor.

19 MS. BAER: Your Honor, agenda item number 9 is the  
20 debtor's fourth omnibus objections to claims. There was one  
21 matter left, the contested matter of Spaulding & Slye. The  
22 parties have reached an agreement on that settlement, and I  
23 have a stipulation and agreed order here for your execution.

24 THE COURT: All right, what's the settlement?

25 MS. BAER: Your Honor, the claim has been settled

1 for \$1,250,000 and no interest even if the plan ultimately  
2 calls for interest to be paid. That is a set and firm amount  
3 that will not change.

4 THE COURT: All right. Has this been circulated?  
5 Okay. For the record, I don't know if they picked you up.  
6 You said it was sent to the Unsecured Creditors Committee.

7 MS. BAER: Yes, we've been in consultation with the  
8 Unsecured Creditors Committee on this. They have seen this  
9 order, and they do know the details of the settlement.

10 THE COURT: All right, that order is entered.

11 MS. BAER: Your Honor, agenda item number 10, the  
12 debtor's fifth omnibus objections to claims. There are a few  
13 contested claims left over on the exhibit, and we're asking  
14 that this be continued to next month.

15 THE COURT: All right. Okay, that's entered.

16 MS. BAER: Your Honor, agenda item number 11 is the  
17 debtor's eighth omnibus objections to claims. There are  
18 three contested claims left, and we're asking those be  
19 continued to next month.

20 THE COURT: Thank you. That order's signed.

21 MS. BAER: Agenda item number 12, the debtor's  
22 ninth omnibus objections to claims. On this matter, Your  
23 Honor, there are no responses and the order is adjudicating  
24 some of the matters and continuing a couple of them where  
25 there were issues.

1 THE COURT: All right. Thank you. That's signed.

2 MS. BAER: Your Honor, agenda item number 13, the  
3 debtors' tenth omnibus objections to claims a non-substantive  
4 objection, we received no responses and all of the matters on  
5 there have been resolved according to the order.

6 THE COURT: Okay. Thank you. Okay, that's signed.

7 MS. BAER: Agenda item number 14, the debtors'  
8 eleventh omnibus objections to claims. This was a non-  
9 asbestos Gateway objection. We received no responses. We  
10 have received some contact. Some of the matters have been  
11 resolved. Some of them are being continued, and there's one  
12 stipulation that's attached. It does not call for Court  
13 signature. It's just a stipulation resolving that claim.

14 THE COURT: All right. Thank you. That's signed.

15 MS. BAER: Your Honor, that takes us to agenda item  
16 number 15, which is the joint motion of Sealed Air and the  
17 Asbestos Committees for entry of the Sealed Air settlement  
18 agreement. Your Honor, I'm sure that Sealed Air would like  
19 to present this matter to the Court, but I'm pleased to  
20 submit to the Court that we are all in agreement on the order  
21 to approve the settlement agreement.

22 THE COURT: Okay.

23 MR. WASSERSTEIN: Good afternoon, Your Honor.

24 Henry Wasserstein from Skadden Arps on behalf of the Sealed  
25 Air Corporation defendants in the adversary proceeding. Your

1 Honor has before her the renewed motion that has been made to  
2 approve the settlement together with the response that was  
3 submitted by the debtors on April 24. So Your Honor should  
4 have everything that has occurred up until April 24. If Your  
5 Honor would care for me to do so, I can briefly summarize the  
6 chronology of events that occurred up until that time.  
7 They're all in those papers. There's nothing new there.

8 THE COURT: They are in the papers, and it's not so  
9 much the chronology that I'm confused about, it's who's who  
10 in the zoo. I'm not really sure what the purpose of or the  
11 relationship and the affiliation between the parties such  
12 that they're going to be entitled to a 524(g) injunction is,  
13 under this settlement, nor am I sure how if the debtor, for  
14 example, loses exclusivity and/or it doesn't have the plan  
15 that's proposed, how this settlement can be effectuated and  
16 why we're going through this exercise now.

17 MR. WASSERSTEIN: Your Honor, as I understand it,  
18 the plan that the debtors have submitted, the keystone to  
19 that is the settlement agreement between Sealed Air and the  
20 two Asbestos Committees. If the settlement agreement is not  
21 ultimately approved, Sealed Air would have the ability to  
22 walk away from the settlement agreement and be in whatever  
23 position it would otherwise be. So certainly in connection  
24 with that plan, with that proposed plan, the Sealed Air  
25 settlement agreement is very significant. Also, given the

1 amount that is involved in this, ultimately it is something  
2 that needs to be resolved independent of whatever plan the  
3 Court ultimately approves because we're talking here of an  
4 amount that today approaches a billion dollars based upon the  
5 current value of the Sealed Air stock that is part of the  
6 package. With regard to the existence of the 524(g) trust  
7 issue, all that is being done here is taking any potential  
8 exposure that Sealed Air would have as a result of debtors'  
9 asbestos liabilities and shielding those. There are no other  
10 asbestos liabilities that the Sealed Air defendants have.  
11 It's all derivative of their relationship with the debtors  
12 and the acquisition of the Cryovac business spec, I guess, in  
13 1998. So that's why this is something that we believe needs  
14 to be addressed and now would be an appropriate time to do  
15 it.

16 THE COURT: All right.

17 MR. WASSERSTEIN: Do you need me to go over the --  
18 Well, you said you understand the prior events. Is there a  
19 reason for me to go over that?

20 THE COURT: I don't think so --

21 MR. WASSERSTEIN: Okay.

22 THE COURT: -- unless there's something that you  
23 think really needs to be brought to my attention.

24 MR. WASSERSTEIN: There really isn't. I think  
25 really what ought to be done is to go forward from April 24

1 when the Court received the last papers from W.R. Grace and  
2 take it to today as to where we are now. In connection with  
3 that, if I might, I would like to hand up a proposed order to  
4 the Court.

5 THE COURT: All right.

6 MR. WASSERSTEIN: That is an amendment of the prior  
7 proposed order that had been handed up.

8 THE COURT: All right. Thank you.

9 MR. WASSERSTEIN: The April 24 submission of W.R.  
10 Grace basically stated that they did not object to the  
11 approval of the settlement agreement. They characterize the  
12 payment as a -- they characterize it as being a principal  
13 part -- a significant part of their proposed plan of  
14 reorganization, and that, quote, "This payment is critically  
15 important in order to achieve confirmation of the plan,"  
16 close quote. They also noted that even though they were not  
17 parties to the settlement agreement, that they intended to  
18 comply with the settlement agreement. The settlement  
19 agreement is based upon two things: (a) -- from the Sealed  
20 Air's point of view -- it's based upon (a) the establishment  
21 of the 524(g) trust and the appropriate injunction, and (b)  
22 an attempt to get the best possible tax situation for Sealed  
23 Air for the payments that it is making. And that requires  
24 some cooperation for W.R. Grace. The settlement agreement  
25 required the Asbestos Committees to use their best efforts to

1 have a plan confirmed that provided for these types of  
2 things. The debtors have indicated that they have no problem  
3 with that, and they did that in that document. What the  
4 debtors were concerned about was the possibility that they  
5 would be required to take some action that would expose them,  
6 their officers and directors to potential exposure, either  
7 civilly or criminally. They also indicated in their papers  
8 that they understood that the way the settlement agreement  
9 currently existed and the way the law currently existed that  
10 that was not a problem today. So, essentially what we did  
11 over a period of time, and we've had extensive conversations,  
12 communications, we asked for one month extension to try to  
13 work out what we did, and we were able to work it out.  
14 Everything that is done is set forth in paragraph (4) of the  
15 proposed order, and that appears on the fifth page of the  
16 document. And essentially, paragraph (4) does three things:  
17 First of all, it reflects debtors' agreement that they're  
18 going to comply with the settlement agreement, and indeed, it  
19 directs them to comply with that agreement. Second, it  
20 provides that wherever the settlement agreement calls for the  
21 Committees to use their best efforts to have Grace take  
22 action or refrain from taking action that the debtors will do  
23 that, will take that action or refrain from that action. And  
24 finally, it provides a slight modification of the provision  
25 that had been proposed in the April 24 memorandum submitted

1 by Grace. What it provides is, is that if there is a change  
2 of law as that term is defined in the settlement agreement,  
3 that occurs after the date that Your Honor signs an order  
4 approving the settlement agreement, then W.R. Grace, the  
5 debtors' Sealed Air, the Committees, whoever would be  
6 required to take an action or refrain from taking an action  
7 as a result of a change of law after the date the order is  
8 signed would be absolved from having to take such action or  
9 refrain from taking that action. So in effect, what it does,  
10 is it takes the provision that debtors were proposing and  
11 just moves it forward to after an order is signed. Those are  
12 the only changes that appear in the proposed order that  
13 differ from the order that had previously been presented to  
14 the Court, other than a renumbering of paragraphs and some  
15 typographical changes. We circulated this proposed order to  
16 the debtors, the Asbestos Committees, the Unsecured Creditors  
17 Committee, the Equity Committee, the Futures Representative,  
18 and the United States Trustee. We have received no  
19 objections from anyone with regard to the proposed order.

20 THE COURT: Mr. Baena, did you have something you  
21 wanted to say?

22 MR. BAENA: May it please the Court, I just want to  
23 make sure that the Court got the answers to all the questions  
24 that the Court had. I believe that one of the questions you  
25 asked was whether the loss of exclusivity by the debtor would

1 impact the settlement agreement, and I think the answer is,  
2 not really. This settlement agreement provides a contour for  
3 a reorganization of the debtors by any party in interest  
4 offering up such plan of reorganization, so long as everybody  
5 abides by the terms of the settlement agreement. And I can't  
6 imagine a constituency in this case that would wish to  
7 somehow fail to follow the road map of this settlement  
8 agreement and thereby augment this estate's assets for  
9 reorganization by, as Mr. Wasserstein said, one billion  
10 dollars or more. It's ironic, Judge, that it was on June  
11 14th, that Mr. Lockwood and I -- June 14, 2001, that Mr.  
12 Lockwood and I went to Judge Wolin and asked for permission  
13 to prosecute this list. It was November 27, 2003 when we  
14 came to a settlement with Sealed Air and Fresenius about that  
15 litigation, and here we are, not quite but almost two years  
16 later, trying to consummate it. We urge that the Court  
17 approve the settlement here and now so that there's no  
18 misgivings or any question about the fact that this is  
19 available as a centerpiece of a plan of reorganization.

20 THE COURT: Okay. Mona, can you call Rachel and  
21 get them to turn some air on in here. It is really awful.  
22 All right, anyone else? All right, let me take a look at  
23 this order, please. Okay, how long is the Bankruptcy Court  
24 supposed to have jurisdiction to make the determination as to  
25 whether or not the applicability of paragraph (4) that there

1 has been some change in the circumstances after the date that  
2 the settlement's approved will take place?

3 MR. WASSERSTEIN: I'm not sure that the parties  
4 considered that, Your Honor, but I would assume that it would  
5 be as long as there's an issue relating to tax returns being  
6 submitted. Does that sound right? Mr. Chehi points out,  
7 Your Honor, that paragraph (11) provides for continued  
8 jurisdiction of the Court even after the closing of the  
9 Chapter 11 cases.

10 THE COURT: Well, that's what the old order said  
11 too.

12 MR. WASSERSTEIN: Yes. It said it in paragraph  
13 (10) however.

14 THE COURT: Okay. Congratulations. The estate's  
15 \$1.2 billion richer.

16 MR. WASSERSTEIN: Thank you, Your Honor.

17 MR. BAENA: Thank you, Judge.

18 THE COURT: Now, is there anything left in these  
19 two adversaries? Can they be closed? Because if so, I want  
20 to put that in this order too. One is still closed, has  
21 never been reopened, I think, even though we're still getting  
22 things filed at it.

23 MR. BAENA: Judge, my confusion is, where the  
24 adversaries are right now, actually.

25 THE COURT: Well, I hope they're here because if

1 they're not this order's not worth much.

2 MR. BAENA: Because, you know, we were prosecuting  
3 this as additional.

4 THE COURT: No, I believe that they're back here  
5 because --

6 MR. BAENA: And those files have been closed. I  
7 thought we had --

8 THE COURT: No, the confusion is that one of the  
9 adversaries has been closed, but you folks are still filing  
10 things at it. The other adversary has not been closed, but  
11 not much is being filed at it. This one has both adversary  
12 dockets on it, docket numbers on it, one of which is closed  
13 and has not been reopened including the fact that fee  
14 petitions were filed at it. I raised this with debtors'  
15 counsel a number of months ago asking them to get it reopened  
16 if necessary. It's never been reopened. So right now, I  
17 have a closed adversary that I'm entering an order at.

18 MR. HURFORD: Your Honor, if I may, Mark Hurford of  
19 Campbell & Levine. The other issue that remains open, as  
20 Your Honor may or may not be aware, is in relation to the  
21 Cybergenics opinion, there were some motions filed to attempt  
22 to deal with that situation. There were appeals taken to the  
23 Third Circuit. Some of those appeal remain pending. Our  
24 office, our Committee has been communicating, with the help  
25 of the other parties, to update the Third Circuit on where

1 those are. So, that case will need to be closed out --

2 THE COURT: Which adversary?

3 MR. HURFORD: Well, we appealed from really both.  
4 To my knowledge Judge Wolin consolidated both of the  
5 adversaries to be dealt with together.

6 THE COURT: Well, I don't think there's an order  
7 that substantively consolidates these. I know he was  
8 tracking them together, but I'm not familiar with all of  
9 Judge Wolin's orders, but I'm not aware of one that  
10 consolidated the adversaries.

11 MR. HURFORD: Your Honor may be correct. There may  
12 not be a written order to that effect, but they were all  
13 dealt with in a consolidated basis, and my office will take  
14 the lead in disposing of the appeal to the Third Circuit.  
15 We've indicated to them that once this order was entered, we  
16 would communicate with all the parties to dispose of those  
17 appeals.

18 THE COURT: They're moot?

19 MR. HURFORD: Exactly.

20 THE COURT: All right, so you're going to be  
21 dismissing the appeal. So that won't be a bar to closing the  
22 adversaries.

23 MR. HURFORD: I'm just noting for the Court that  
24 that needs to be done, that's all.

25 MR. CHEHI: Your Honor, Mark Chehi again. Just as

1 a point of information, it may be helpful. The adversary  
2 proceeding in which the Sealed Air disputes were being  
3 adjudicated and out of which this settlement agreement arises  
4 was referred to this Court, Your Honor, for purposes of the  
5 settlement motion only. That had been pending for some time,  
6 so, assumably then the adversary proceedings that are at  
7 issue are still pending before Judge Buckwalter in the  
8 District Court, and probably the right thing to do here, as  
9 just a suggestion, is to the extent that there's appellate  
10 practice pending out of the Sealed Air matter and the other,  
11 you know, again, dismissal of the appeals is appropriate, and  
12 then just leave the adversary proceedings open as they might  
13 be before Judge Buckwalter and just have this settlement  
14 order entered there, and then the parties could move before  
15 Judge Buckwalter to close the adversaries if they're still  
16 before him.

17 THE COURT: Well, what's left in the adversary?

18 MR. BAENA: I don't know that that's exactly right,  
19 with all due respect, because Judge Buckwalter referred the  
20 settlement motion in all related pleadings, as I recall, to  
21 this Court, and we never really understood what that meant.  
22 We assumed it meant everything. Indeed, you dealt with the  
23 fee aspects.

24 THE COURT: Yeah, I thought it meant everything  
25 because I don't know what's not related to the settlement

1 motion.

2 MR. WASSERSTEIN: There is one thing that is  
3 pending before Judge Buckwalter that is a conditional motion  
4 that was made by Sealed Air in connection with revisiting  
5 Judge Wolin's decision regarding the standards to be applied  
6 to determine solvency back in July of 2002. That motion was  
7 filed, admitted, and stated to be a motion that was a  
8 conditional motion, a protective motion, in the event that  
9 the settlement agreement and the terms of the settlement  
10 agreement were not incorporated into a plan of reorganization  
11 and that the Sealed Air settlement fell apart. That is still  
12 something since there is not yet a plan of reorganization  
13 that's been approved that is still something that has a  
14 capability -- I'm not saying a likelihood but a capability of  
15 rearing itself again. And so, therefore, that motion I would  
16 not like to have -- I would like to keep that alive.

17 THE COURT: Why can't that simply be dismissed  
18 without prejudice so that in the event that this does fall  
19 apart, you can revisit it and reopen the adversary. I don't  
20 see any reason to keep an adversary open when you've got a  
21 settlement. I mean, you've either got a settlement or you  
22 don't.

23 MR. WASSERSTEIN: Your Honor, I don't have a  
24 problem if it were withdrawn without prejudice to renewal in  
25 the event that the settlement does not go through. That

1 would not be an issue for us.

2 THE COURT: Okay, but one second. Okay, one of the  
3 adversaries is closed. I don't know whether the District  
4 Court Clerk closed it or the Bankruptcy Court Clerk closed  
5 it, but one of the adversaries is closed. So, it doesn't  
6 exist anywhere anymore, and that's why I'm still confused  
7 about where these orders are to be docketed and whether both  
8 adversaries are ready for final disposition.

9 MR. BAENA: Your Honor, the adversary that was  
10 closed, we believe, is the Fresenius adversary, which was 02-  
11 2211.

12 THE COURT: Okay.

13 MR. BAENA: The adversary that remains open is the  
14 Sealed Air adversary, which is 02-2210. This motion,  
15 obviously, relates directly to 02-2210.

16 MR. WASSERSTEIN: Correct.

17 MR. BAENA: And I would think that's where the  
18 order ought to be filed when it's entered.

19 THE COURT: I'm sorry, the settlement or the Sealed  
20 Air --

21 MR. BAENA: The settlement order in respect to  
22 Sealed Air that was presented to you, which you approved,  
23 that belongs to 2210.

24 THE COURT: Okay, but not to 2211?

25 MR. BAENA: No, no. 2211 was settled by a prior

1 settlement agreement that was approved by Judge Wolin, I  
2 believe, a hundred or so years ago.

3 MR. WASSERSTEIN: Involving Fresenius but not  
4 Sealed Air.

5 THE COURT: All right, one of the -- I think it was  
6 this one, though, the Sealed Air adversary, Judge Wolin had  
7 actually entered -- had actually signed an order that has  
8 never been docketed that approved the settlement in  
9 principal. I thought that actually applied to both. It was  
10 apparently not docketed because there were documents filed  
11 under seal so for some reason the order that approved the  
12 settlement didn't get filed.

13 MR. WASSERSTEIN: Now, I understand the confusion.  
14 That was signed on Thanksgiving Eve, 2002.

15 MR. BAENA: November 27, 2003.

16 MR. WASSERSTEIN: 2002.

17 MR. BAENA: 2003?

18 MR. WASSERSTEIN: 2002. That was when both -- when  
19 there were term sheets that were submitted in connection with  
20 both cases to Judge Wolin subject to execution of formal  
21 settlement agreements.

22 THE COURT: Right, that's right.

23 MR. WASSERSTEIN: So, that did apply to both of  
24 those cases. Subsequently, the Fresenius settlement  
25 agreement was executed, presented to Judge Wolin, and

1 approved by him, but this one, involving Sealed Air was never  
2 -- Well, it was presented to him, but it was never approved  
3 because of all the problems that developed thereafter.

4 THE COURT: All right. Okay, so, this says at the  
5 bottom of the caption that this document pertains to  
6 Adversary 02-2210, and that is correct.

7 MR. BAENA: That is correct.

8 THE COURT: And that's where it should be docketed.  
9 Okay, so, Fresenius was closed. Nothing's pending in it. So  
10 now let me restate the question: Can this one be closed?

11 MR. WASSERSTEIN: It can be, Your Honor, so long as  
12 it's understood that the motion that we have presently  
13 pending before Judge Buckwalter can be renewed. It would be  
14 withdrawn without prejudice to its renewal in the event that  
15 ultimately the settlement agreement was not performed.

16 THE COURT: All right, I will either write that  
17 into this order or you folks can submit a separate order that  
18 closes the adversary, which may be more appropriate since you  
19 want to get the appeals dismissed anyway.

20 MR. WASSERSTEIN: We will do it with a separate  
21 order.

22 THE COURT: All right, but I want a deadline for  
23 doing it so I can not have to track this anymore.

24 MR. CHEHI: What about July 8th, Your Honor, right  
25 after the holiday.

1 THE COURT: That's fine.

2 MR. BAENA: This year?

3 MR. CHEHI: This year, 2005.

4 THE COURT: All right. A certification of counsel  
5 with an order closing the 02-2210 adversary is to be  
6 submitted -- Who's going to submit it?

7 MR. CHEHI: Sealed Air can submit it, Your Honor.

8 THE COURT: All right. So there are no further fee  
9 apps, nothing, coming in either of these adversaries; is that  
10 correct? This is it.

11 MR. BAENA: Judge, the order you've entered has a  
12 retention of jurisdiction provision --

13 THE COURT: Yes, it does.

14 MR. BAENA: -- in respect to the settlement, and  
15 we're content that that's sufficient for us to come back to  
16 you if there's any problems between us in regard to the  
17 consummation of the settlement. In regard to the pleadings,  
18 the pleadings are concluded. There are no further pleadings  
19 to be had.

20 THE COURT: All right, okay. You disagree?

21 MR. TACCONELLI: No, Your Honor. Theodore  
22 Tacconelli, local counsel for the Property Damage Committee.  
23 Your Honor, we were directed to file our fee applications in  
24 this adversary proceeding. Our firm filed a quarterly fee  
25 application in the 2210 adversary proceeding. What we could

1 do is we could withdraw that and file it in the main case.  
2 It's a very small fee application. I certainly don't want  
3 that to hold this up.

4 THE COURT: When is it set for hearing?

5 MR. TACCONELLI: That would be the next round of  
6 quarterly fee applications in this case, whatever the next  
7 date would be.

8 THE COURT: All right, if you don't mind, Mr.  
9 Tacconelli, I think that would be helpful.

10 MR. TACCONELLI: That will be fine, Your Honor.

11 THE COURT: All right.

12 MR. TACCONELLI: We will withdraw it and file in  
13 the main case.

14 THE COURT: Thank you.

15 MR. TACCONELLI: Thank you.

16 THE COURT: No one has an opposition to that;  
17 correct? Okay, thank you.

18 MR. TACCONELLI: Thank you, Your Honor.

19 THE COURT: Thank you. Ms. Baer?

20 MS. BAER: Your Honor, agenda item number, I think  
21 it's 16, yes, is the motion of The Scotts Company. That was  
22 mistakenly put on the agenda. That matter was actually  
23 resolved a couple of months ago, and you ordered that it be  
24 placed back on the agenda for next February. And with that,  
25 Your Honor, we are ready to go back to agenda item number 8,

1 which is exclusivity, and Mr. Bernick will address that.

2 THE COURT: Anyone need a break? No? Let's just  
3 keep going then.

4 MR. BERNICK: Your Honor, I want to take us back  
5 for just a moment to the end of the hearing that took place  
6 on the 21st of January of this year. Your Honor will recall  
7 at that time that the debtors had just filed the proposed  
8 plan of reorganization which was obviously a significant  
9 development in the case, and that plan garnered the support  
10 both from equity holders and also from the unsecured  
11 creditors. It also attracted objections by other  
12 constituencies, and in particular, the other constituencies  
13 lodged objections to the ultimate confirmability of the  
14 plan. We had an extensive argument on the 21st of January, a  
15 very detailed argument. And at the conclusion of the  
16 argument, Your Honor decided to defer those issues, those  
17 confirmation issues until after we had gone through an  
18 estimation process, and that's where we were. What was  
19 interesting was that there was only one objection to the  
20 continuation or extension of exclusivity at that time, and it  
21 was kind of, what I'll call, a MEAP (phonetical) objection.  
22 There's one objection by the Future Claimants Representative,  
23 Mr. Austern, and after all of the debates that took place  
24 during that hearing, we took up the issue of exclusivity, and  
25 Mr. Frankel very graciously said, Well, we do have an

1 objection but we're prepared to withdraw that objection, and  
2 exclusivity was extended, therefore, until this month. Now,  
3 when it comes to this extension of exclusivity, we are  
4 walking down the road, indeed trying to move more quickly  
5 down the road, following through on exactly the plan and the  
6 path that was set out in January, but now we have three  
7 objections that have been lodged, the Futures Representative,  
8 the Personal Injury Committee, and also the Property Damage  
9 Committee. And they're lodged with fervor in, you know,  
10 tension, and the real question is, well, what is it that's  
11 happened since January that has so dramatically altered the  
12 path of this case that when there was essentially no  
13 objection in January, there's now all of a sudden all of  
14 these objections to exclusivity being extended, and I would  
15 venture to say that there are three ways of looking at this:  
16 Two are improper, one is proper, and the answer under the  
17 proper consideration is there clearly ought to be an  
18 extension of exclusivity. The first improper suggestion  
19 that's made in the papers in support of the objection to  
20 exclusivity, is that we're all dealing with a plan that is an  
21 un-confirmable plan. That is nothing more than an effort to  
22 reargue the very issue that the Court addressed in January  
23 and said was going to be deferred. We're not going to gain  
24 here by continually revisiting the issue, the same identical  
25 issue, of whether the plan is confirmable or not. We

1 obviously believe that it is. We have support in that in the  
2 Equity Committee and the Unsecured Creditors Committee. They  
3 agree that it is. There's disagreement, and Your Honor  
4 decided in January that we were going to defer that issue.  
5 Why are we continuing to talk about it? It's a waste of  
6 time. The second consideration, that I think drives these  
7 papers and it's very obvious, is that as we now have gone  
8 down the road of the objection process that we believe is  
9 critical to estimation, that is the process of obtaining  
10 answers to these claim forms, making objections and the like,  
11 the pressure is on. It's on the property damage claimants  
12 because we now have their claim forms, and we are now lodging  
13 the objections. It is on the Personal Injury Committee  
14 because we now have submitted a proposed claim form that we  
15 believe is going to be very effective in connection with the  
16 estimation process. All these things clearly were  
17 contemplated in January. We're now moving down that road,  
18 and basically, what we're now seeing is the revival of issues  
19 about whether there really ought to be this kind of objection  
20 process. How revived? Well, if they terminate exclusivity,  
21 then presumably they're going to be arguing for a different  
22 kind of plan that doesn't turn on any of those things. Their  
23 kind of estimation, which doesn't really consider the merits  
24 of any of the claims, is simply an extrapolation from  
25 settlements. You know all these arguments. We're going to

1 go down the road to a one-way street estimation. So the sub-  
2 text of the request that exclusivity not be extended, the  
3 sub-text is quite clear, which is, Your Honor, don't take the  
4 time to do an estimation that is an actual litigated  
5 estimation, terminate exclusivity so that we can come up with  
6 a plan that won't require any of that effort, and we'll be  
7 able to cram it down. Now, obviously that is a false  
8 promise. If exclusivity were terminated and other additional  
9 plans were submitted, there's no way that the interest of the  
10 equity holders or the interest of the unsecured creditors can  
11 simply be blinked away. We're going to face exactly the same  
12 issues, but now in the context of a much messier situation,  
13 which is competing plans. Which then brings us to what the  
14 real issue is, and the third issue, and that is very simple.  
15 Since January, when there was the MEAP objection then  
16 withdrawn and there were no objections, is there some  
17 fundamentally different vision of how this case can be  
18 resolved than we were talking about in January or that we've  
19 talked about for the last three years? Is there something  
20 new that all of a sudden is now being articulated? And the  
21 answer to that is absolutely not. There's no new vision for  
22 the future, no silver bullet, no magical solution that  
23 somebody has conceived of in the six months that now have  
24 passed that all of a sudden is going to bring this case to a  
25 close without addressing the hard issues that have posed a

1 quandary in all respects, litigation respects, settlement  
2 respects, and the like, there is no new path, and the path  
3 that we're on, we believe, Your Honor, is the right path.  
4 And let me be very specific on what we propose going forward.  
5 We had back at the beginning and it is ironic in hearing the  
6 complaints about the time that this case has taken when you  
7 think about where this case was and when it was filed in  
8 2001. In 2001, the very first day of the case, we laid out a  
9 road map that identified each and every one of the issues  
10 that had to be addressed, and they could be addressed by  
11 settlement or it could be addressed by litigation. And they  
12 haven't changed. We have ZAI. We have the traditional  
13 property damage claims. We have personal injury, and we have  
14 fraudulent conveyance. We talked about these on 4/01.  
15 Fraudulent conveyance actually was raised because of  
16 continuing the effort on part of certain claimants, the AI  
17 claimants, to continue litigation outside the context of the  
18 bankruptcy. They were all raised, and I remember still, I  
19 think it was November 22nd of 2001, we actually had case  
20 management orders that had been submitted. We had briefs  
21 that contested those orders and made other kinds of  
22 proposals. Everything was before Judge Farnan. Everything  
23 was ripe. Case management, let's go. And then we learned,  
24 literally, as we came into court for a hearing on the case  
25 management orders, we learned that the case was going to be  
26

1 reassigned. And as a result, Judge Wolin took over, and  
2 Judge Wolin decided he had a priority scheme. He wanted the  
3 fraudulent conveyance to be number one. He wanted PI to be  
4 held, and PD and ZAI, he said, Well, those can go forward but  
5 before Your Honor. And we now know that as a result of that,  
6 during the period of time that then followed, the fraudulent  
7 conveyance claim that was litigated in '01 has now been  
8 settled. The ZAI claim was litigated, and it's now under  
9 submission. The PD claims, we got the forms, which were  
10 contested and then approved by Your Honor and then the appeal  
11 was taken, actually by the Property Damage Committee, and  
12 those forms were in place, and they've now been filled out  
13 and we're poised to litigate that. That was able to go  
14 forward, Your Honor was able to pursue both of the dimensions  
15 of the litigation that had been placed before you, and the  
16 personal injury folks remained on hold. We didn't -- I mean,  
17 Judge Wolin was very explicit. He put it very far at the end  
18 of the game, and it's only recently that we've now got a  
19 proposed form on personal injury. This now, the settlement  
20 of fraudulent conveyance has been approved. This is  
21 submitted for a ruling, that is ZAI and with respect to PD  
22 we're now in the process of filing objections. So, while the  
23 timing is not ideal from anybody's point of view, to say  
24 nothing of the debtor, the debtor's been here from day one,  
25 he could not have been more diligent. We pressed at every

1 single opportunity. So, where does this leave us? First I  
2 should say, we should make mention of the legislation. The  
3 legislation is kind of the 600 pound gorilla, actually I  
4 think that -- originally that role was accorded to the ZAI  
5 claimants by Brother Lockwood. So, it's the two ton elephant  
6 in the room, and it's a factor that's out there, and it's on  
7 people's minds, but I think there's probably a lesson from  
8 the CE case, the new CE plan, the modified plan was just  
9 submitted at the end of last week. Combustion Engineering  
10 maybe had no choice but to go forward with their efforts to  
11 reorganize because they couldn't wait for legislation, and  
12 now finally, God bless, it looks like that actually is going  
13 to get resolved. I don't know where the legislation is going  
14 to go. I don't think anybody knows where the legislation's  
15 going to go, but one thing's for sure, which is that we're  
16 not going to make progress in this case simply waiting for  
17 the crystal ball on legislation to become clear. We had to  
18 press this case forward. So there is no silver bullet that  
19 we can count on in the context of this Court. Second path is  
20 settlement, and there's a reference in the papers filed by  
21 the property damage claimants that they're unaware of  
22 settlement discussions, which is kind of a stunning  
23 statement. The company throughout this entire period of time  
24 has had numerous contacts with all constituencies, including  
25 members of the Property Damage Committee to deal with the

1 prospect of finally trying to settle this case. There have  
2 been all kinds of discussions with all kinds of lawyers, all  
3 kinds of representatives. We have not been idle in that  
4 process. What has emerged? Well, gee, it's a shocker. It's  
5 not just the debtor who disagrees with the value of the  
6 claims that have been lodged. We're not the only ones that  
7 have an issue. The property damage claimants disagree with  
8 the personal injury claimants and what the personal injury  
9 claims are worth. The personal injury claimants disagree  
10 with the property damage claimants. This is not the first  
11 case. They've been fighting with each other since the  
12 Celotex case, and they continue to fight with each other in  
13 the Celotex case tooth and nail. They're fighting in other  
14 cases. So, the tort claimants, bodily injury and property,  
15 they're at each other's throats. They don't agree on what  
16 the settlement value should be. What about the ZAI claimants  
17 versus the traditional property claimants? They don't agree  
18 either. What about the relationship between all that and  
19 equity, or all that and the unsecured debt? No one agrees.  
20 No one can even figure out what the claims are worth. And  
21 traditionally that's what the court system is all about. If  
22 you can't agree on what the claims are worth, you litigate,  
23 and the only way that you make progress in settlement is to  
24 litigate because it creates the pressure for settlement. So,  
25 the whole idea that somehow the debtor has been an obstacle

1       in this process is laughable, and then the Future Claims  
2       Representative was appointed, and David Austern is one very  
3       talented, resourceful, and capable Future Claims  
4       Representative, and a good force for mediation and  
5       settlement, and that held out some promise. They haven't  
6       come up with a concept either that everybody agrees to. So,  
7       this is not a debtor problem. This is a problem that is  
8       endemic to the subject matter of the case. Now, the only way  
9       the problem can be resolved, is to make further progress on  
10      the litigation front, which then brings me to where we are,  
11      and where I think that we should go. We believe that Your  
12      Honor should continue to press forward. When it comes to  
13      ZAI, I know we discussed this last time, but we believe it  
14      would be critical for Your Honor to devote the time and  
15      resources that are necessary to decide that issue. It's just  
16      --

17                   THE COURT: I am doing that.

18                   MR. BERNICK: Good, great, terrific. With respect  
19      to personal injury, on personal injury we now have the forms  
20      that have been developed, and there's been a very  
21      entertaining if not productive dialogue between the debtor  
22      and Mr. Lockwood and the others on the Personal Injury  
23      Committee with regard to that form. We spent a lot of time  
24      on it. They spent a lot of time on it, and it's now going to  
25      be before Your Honor for a determination, just like we did

1 property damage personal injury, that group can do personal  
2 injury. Personal injury inevitably will take more time as a  
3 track because the form has to be filled out and there are  
4 some tough issues. So, in a sense, that's probably the  
5 slowest track. Fraudulent conveyance we don't have to worry  
6 about any more, which leaves us, and I think I'm going to  
7 spend a couple of minutes with respect to the property damage  
8 claims. All right, Jen, if you could hand up to the Court  
9 and two others these -- Yes, just all of them. I just want  
10 to review very quickly what we think is going to happen with  
11 the property damage which is actually, I think, going to  
12 occupy the attention of the parties here in the short term.  
13 If you could just --

14 MR. BAENA: Judge, while they're looking for  
15 charts, can I just have clarification. Are we arguing  
16 exclusivity now or are we arguing the status conference about  
17 PD claims or are we just going off on a tangent to obfuscate  
18 the issue before Court?

19 MR. BERNICK: What we're doing is we're handing up  
20 the charts that will then be used for the exclusivity  
21 argument. If you want to look at them, that's probably the  
22 best way of expediting them, but we'll get to all those  
23 issues in due course. They have seen fit to object to the  
24 extension of exclusivity in the very midst of the process  
25 that constitutes the lifeblood of this case. If they don't

1 want to listen to the reasons why we believe that exclusivity  
2 should be extended, that's fine, but they're the ones that  
3 have made the objection. Door is open, we're walking through  
4 the door. What is going on with the traditional property  
5 damage claims? Well, as you can see from the first chart,  
6 Mr. Speights, from Speights and Runyan, accounts for 73  
7 percent of all the asbestos property damage claims, 73  
8 percent. Mr. Dyes (phonetical) who is also a very -- been  
9 involved very deeply in this process for many years, has come  
10 in with what is obviously a much more limited universe of  
11 claims at about 4 percent. It's 150. Now, we have all the  
12 information from the claim forms, Your Honor, and we're now  
13 putting it on a -- it's basically an analytical structure, a  
14 data base that we're using so that we can lodge all  
15 objections, based upon the face of the claim form and on the  
16 basis of the documentation that's attached, we believe by the  
17 middle of September if not sooner. So, while we're peeling  
18 off the issue of the authority to file claims, our goal is to  
19 be completely done with that by the middle of September so we  
20 can then litigate the success of issues going forward and  
21 find out how much this traditional property damage claim is  
22 worth. Remember, at the time that this case was filed, there  
23 were only seven property damage cases left in the entire  
24 United States. We now see over 4,000. That does tend to  
25 raise a question about what's going on. We know what's going

1 on now. Mr. Speights has been called on this now in several  
2 different cases, Federal Mogul; In Re: Owens Corning; In Re:  
3 Celotex; In Re: U.S. Mineral Product Company; and also in  
4 Armstrong --

5 MR. BAENA: I'm going to object, Your Honor. I am  
6 going to object. This is outrageous. Mr. Speights isn't  
7 here. There's no motion that regards Mr. Speights' claims.  
8 There's nothing on this agenda today about the liquidation or  
9 the discussion about property damage claims except the status  
10 conference in regard to a case management order. All we're  
11 here about is whether or not this debtor should have six more  
12 months of exclusivity. That's what we're here about.

13 MR. BERNICK: This is a speaking objection, Your  
14 Honor.

15 MR. BAENA: No, I --

16 MR. BERNICK: Mr. Bernick --

17 THE COURT: Gentlemen, both of you stop. Mr.  
18 Baena, your objection's overruled for this reason: The  
19 debtor is trying to tell me what it's going to do to keep the  
20 case moving and Mr. Speights' objections on the property  
21 damage side, if they have to be litigated, are going to take  
22 up a lot of the resources. To the extent that that's all the  
23 debtor's trying to tell me, I got the point, Mr. Bernick, you  
24 can move onto something else.

25 MR. BERNICK: That's fine. We have a process in

1 motion to deal with -- Let me just give you a global number.  
2 I think, frankly, it's virtually all of his claims have a  
3 fundamental issue which is about whether they've been  
4 authorized to be filed to begin with by an actual client, and  
5 that's one issue that we're going to frame.

6 THE COURT: It doesn't matter. I got the point.  
7 You're going to take on the property damage issues based on  
8 the forms that have been filed --

9 MR. BERNICK: Yes.

10 THE COURT: -- fine. That's what you ought to do.  
11 I'm happy to see that it's coming. September's a good time  
12 frame, okay.

13 MR. BERNICK: Okay. So we then have the remainder  
14 which would be -- We believe that the property damage claims,  
15 we will be able to file our objections in September, and we  
16 then have submitted a case management order, which is the  
17 second real item, I think, that we're going to take up that  
18 deals with that. Let me touch on that very briefly without  
19 getting into the details. Your Honor directed us in January  
20 to develop such a case management order, and I think that the  
21 process was a good and cooperative one in terms of the  
22 overall flow of events. An issue has now been raised, which  
23 I know we'll talk about when we get to the order of whether  
24 the -- whether counsel for the Property Damage Committee is  
25 actually prepared to proceed on the basis of the schedule

1 that we had originally contemplated. So the reason that  
2 we're filing what is not an agreed case management order, the  
3 reason is that we have a different view on how promptly that  
4 should proceed, and the reason that's relevant to exclusivity  
5 is we are proposing that certain of the issues relating to  
6 the property damage claims, that is authorization be taken up  
7 in September, others be taken up beginning in October, and  
8 those are two issues: constructive notice, which can be  
9 litigated on a generic basis, and the Daubert issue, which is  
10 a question of data. That was the same issue that we  
11 litigated before Judge Newsome in the Armstrong case and led  
12 him to strike the basis for most of the property damage  
13 claims, and of course, those claims later were settled by  
14 Armstrong. We anticipate exactly the same kind of processes,  
15 it's a cookie cutter from Armstrong. It's not specific to  
16 any individual claim. We then have the other issues, which  
17 we believe can be litigated on a generic basis, and we would  
18 propose that they are kind of the last way, but all ways  
19 would be completed by the spring to early summer of next  
20 year. We would have basically three hearings over time, the  
21 last one being in June, and that would bring this track to a  
22 close. Of course we hope that at any point during that  
23 process that we can reach agreement, but really ZAI and  
24 property, now that fraudulent conveyance is out of the  
25 picture, it is our assessment that they are today the

1 principal reasons why this case cannot be settled. That's  
2 not to say that we're not going to have a lot of issues with  
3 the personal injury folks, but we believe that there's so  
4 much swing here and the argued for value of these property  
5 claims versus what we believe the reality is, that that is  
6 where the principal obstacle to settle them currently lies.  
7 Now, there have been objections that have been lodged. And I  
8 just want to make a couple of comments on the objections, and  
9 then I note that counsel will speak as vigorously in support  
10 of those objections as they have done in their pleadings.  
11 First of all, the Future Claims Representative, for the life  
12 of me, I can't understand what has changed from the  
13 perspective of the Future Claims Representative since they  
14 raised their hand alone in January as being the sole  
15 objectors and then said, Well, that's okay. We understand  
16 where Your Honor's headed. We withdraw our objection. Why  
17 are they back turning over the same soil, making the same  
18 arguments? They don't have any magical settlement wand  
19 either. The personal injury folks are objecting. It's  
20 obvious why they're objecting. They know that if this  
21 process of claim form development and completion goes  
22 forward, that they will face a real contest on estimation as  
23 opposed to their usual plug the settlement numbers in and see  
24 what comes out at the end kind of approach, which has never  
25 been approved when objected to. The property damage folks,

1 again, it's very obvious. They want to avoid the Speights &  
2 Runyan issues. They want to avoid the objections and they  
3 want more time. What is the vision that the Property Damage  
4 Committee possibly can have? They have none, and the reason  
5 they have none is very simple. This Committee now is  
6 hopelessly conflicted. The PI, the traditional property  
7 damage claims are competing for a piece of the same pie as  
8 the ZAI claims. There are different traditional property  
9 damage claimants with radically different kinds of claims  
10 that they've submitted to Mr. Speights and his 2,000 claims  
11 are completely different. Some of them we don't even know  
12 who the client is, it's just a building. He puts a building  
13 down on the claim form and says, That's my client. And some  
14 of these people are now calling us saying, This guy doesn't  
15 represent us. So they're conflicted as among the traditional  
16 property damage claimants, and then finally the whole  
17 Committee has obviously a very different view of the world  
18 from PI and the unsecureds. Mr. Bennett complains that there  
19 hasn't been a consensual resolution. The heart of that  
20 complaint ought to be directed at his own committee which  
21 can't agree on the approach that they want to take. And the  
22 only answer to that is we're not asking to disband that  
23 committee, the only answer is to remove the conflict by  
24 resolving the issues that drive it. So, we would think it's  
25 very important to keep this case on track. Grace is very

1 dedicated to the proposition that being timely before the  
2 Court. I can tell the Court I apologize for having not  
3 having been present at some of the hearings in the last nine  
4 months. I was on trial. God bless, I'm done with that  
5 trial, and I'm totally focused on this case, and we would ask  
6 for six months' extension.

7 THE COURT: Mr. Baena? Oh, I'm sorry.

8 MR. PASQUALE: Ten seconds, Your Honor, I promise.  
9 Ken Pasquale, for Stroock for the Unsecured Creditors  
10 Committee. Your Honor, just for the record, we did not file  
11 any papers frankly because we thought it apparent that in our  
12 position as co-proponents of this plan, we do in fact support  
13 the debtor's request for exclusivity, and we do so for all  
14 the reasons that the debtor's put before you, and I just  
15 wanted to stand and make that clear.

16 THE COURT: All right, thank you.

17 MR. PASQUALE: Thank you.

18 MR. BAENA: May it please the Court. Scott Baena  
19 on behalf of the Property Damage Committee. Your Honor, this  
20 is the eighth motion for the extension of exclusivity, and  
21 indeed, the motion itself is nothing more than another  
22 iteration of the same old motion that's been made seven  
23 times. In fact, if you read that motion, it is almost devoid  
24 of any grounds for granting the motion. The only indication  
25 of cause that the motion sets forth for the extension of

1 exclusivity at this late date, is that the debtor needs the  
2 time to, quote, "continue to make progress in their  
3 development of a confirmable Chapter 11 plan." Likewise, at  
4 paragraph (13) of the motion, the debtor states that the  
5 termination of exclusivity would undermine the debtor's  
6 opportunity to negotiate, file, and confirm a consensual plan  
7 of reorganization. Now, I don't know what that means other  
8 than what it appears to say, and that is, that the debtor  
9 recognizes that it has a problem. The problem being the plan  
10 which is on the table. We've articulated that that plan was  
11 dead on arrival. We think to some extent the Court shared  
12 our misgivings about the confirmability of that plan back in  
13 January. And deferred may be a charitable way of just saying  
14 putting off to another day dealing with its infirmities. Our  
15 concern, Judge, is that what the debtor tries to do is  
16 connect the estimation process with the extension of  
17 exclusivity in respect of the plan which is on the table.  
18 And we don't see that connection. We think that back in  
19 January when the Court said we're going to embark upon an  
20 estimation process, it wasn't in respect of the debtor's plan  
21 per se as opposed to in respect to any plan. And it didn't  
22 say -- And the Court did not say that the debtor is going to  
23 have exclusivity for the duration of the estimation processes  
24 that it undertakes in respect of both PD and PI, and it  
25 didn't say that nobody could ever complain about the

1 exclusivity that the debtor is enjoying in the meanwhile in  
2 respect of this particular plan that's it's filed. The  
3 Court, indeed, left the door wide open for exactly what's  
4 happening today. The debtor recognizes by its motion that it  
5 should be doing more to gain consensus for a plan, not the  
6 plan that's on the table. And I must tell you, Judge, I  
7 heard Mr. Bernick describe a process that he says is going on  
8 in criticism of statements made by Property Damage in its  
9 objection. I'm unaware of the process. I'm just unaware of  
10 any discussions, any substantive discussions that have taken  
11 place in earnest since last year. It's June, Judge. We have  
12 just enjoyed the fourth anniversary of this case. The  
13 estimation process will go forward. We do not resist it  
14 going forward. We'll talk about the CMO later. We'll talk  
15 about the fact that the CMO they want to present to you  
16 today, I got it 5:30 on Saturday when I was out of the  
17 country. We'll talk about that. But we have not resisted  
18 after our initial objections to the process, we have not  
19 resisted, indeed, we've done everything we can to make the  
20 estimation process in respect to property damage at least a  
21 viable process. But the fact that it goes on is only by  
22 recognition of everybody in the case that it has to happen in  
23 respect of any plan that comes before the Court. It doesn't  
24 entitle this debtor to hold us hostage while it undertakes a  
25 program for estimation that could be two or three years. We

1 can't leave ourselves with their plan as the only option, and  
2 we can't give them the prerogative by keeping their plan on  
3 the table, of keeping us out of the discussion about a  
4 consensual plan that we can put on the table. And that's  
5 what they're doing. And, Judge, we've complained as well  
6 that you've got to take into account in some context or  
7 another and we think it's in this context. But this isn't  
8 the greatest debtor in the world. Despite all the bravado  
9 and all the musings about the things that they've done, this  
10 is a debtor that's been indicted during the course of a  
11 Chapter 11 proceeding. This is a debtor that three officers  
12 of have been indicted during the course of a Chapter 11  
13 proceeding. This is a debtor that's spending millions of  
14 dollars every month to defend those officers and itself in  
15 criminal proceeding.

16 THE COURT: Those actions, as I understand it,  
17 happened before the case was filed, as I understand, with the  
18 ZAI -- or I'm sorry, the Libbey issues; is that the basically  
19 the --

20 MR. BAENA: Judge, the criminal conduct that  
21 they're charged for occurred over an extended period of time  
22 including before the occurrence of bankruptcy. But the  
23 indictment occurred, forgive me for putting it so bluntly, on  
24 your watch.

25 THE COURT: I understand that. Nonetheless, to the

1 extent that that is somehow an accusation that I had  
2 something to do with the criminal indictment, I hope you'll  
3 withdraw that statement.

4 MR. BAENA: But there was criminal conduct that  
5 occurred post-petition as well, Judge.

6 MR. BERNICK: Mr. Baena ought to be very careful in  
7 making representations to the Court about the connection of  
8 that kind of proceeding and clients that he represents are  
9 part of his Committee in Libbey, if he opens that door, he  
10 ought to be fully cognizant of what the consequence might be.  
11 He's now saying that that criminal proceeding has welded up  
12 in this Court, and that's a very, very interesting concept  
13 for his client to be pursuing here.

14 THE COURT: Gentlemen, we're going to take a ten-  
15 minute recess. Mr. Baena, cool off.

16 (Whereupon at 1:33 p.m. a recess was taken in the  
17 hearing in this matter.)

18 (Whereupon at 1:44 p.m. the hearing in this matter  
19 reconvened and the following proceedings were had:)

20 THE CLERK: All rise.

21 THE COURT: Please be seated. Mr. Baena.

22 MR. BAENA: I apologize to the Court if I made my  
23 point too strenuously, Judge.

24 THE COURT: No, Mr. Baena, if you're accusing me of  
25 something improper, I want to see it in writing, and I will

1 stop these hearings right now.

2 MR. BAENA: I wasn't accusing the Court of  
3 anything, Judge, other than the fact that we have a debtor  
4 that has misbehaved.

5 THE COURT: We do. That's apparent, at least from  
6 the prosecution's point of view with criminal indictments,  
7 but Mr. Baena, you've been involved in this case. The other  
8 committees have been involved in this case, and quite  
9 frankly, the only information I get is by way of pleadings  
10 filed from parties, and to the best of my knowledge, I wasn't  
11 given any information early on in this case that there were  
12 indictments likely of officers, directors, or anyone else in  
13 the case, and I resent the accusation, and I don't use that  
14 word lightly because there are very few things in my life  
15 that make me resent things, and I do resent that remark. So,  
16 if you think I'm doing something improper, I want to hear it  
17 right now. I want it filed in writing, and I will stop these  
18 proceedings until it is adjudicated. This is your chance.

19 MR. BAENA: Judge, again, I never suggested except  
20 perhaps by the use of poor choice of words that the Court did  
21 anything untoward. Nothing was intended to make that  
22 accusation.

23 THE COURT: All right, then let's get on with the  
24 argument.

25 MR. BAENA: Judge, I'd like to make two last points

1 and leave it to our papers, which I think are extensive and  
2 set forth adequate reasons why this motion ought to be  
3 denied. The first point I'd like to make is the observation  
4 that Mr. Pasquale brings to mind when he speaks on behalf of  
5 a co-proponent of the pending plan, and that is the fact that  
6 the Equity Committee and the Trade Committee are co-  
7 proponents of the plan that is on the table. And it just  
8 strikes us as odd and inexplicable that the only way to be a  
9 player four years in this game about the outcome of this case  
10 is by agreeing with the debtor to a plan that we can't agree  
11 to. And because we object to it, we're left at the side  
12 lines like critics as opposed to proponents. The unsecureds,  
13 equity, and the debtor have had the opportunity to put  
14 forward a plan. Four years later, we have not, the asbestos  
15 constituencies have not. We're sidelined, and we believe  
16 that that's inappropriate. The second point I'd like to  
17 make, we do allude to in our papers, and I think it's more  
18 than anecdotal. It's very reflective of a point, and that is  
19 the fact that under the Reform Act that was recently passed  
20 by Congress, we wouldn't be debating four years into a case  
21 whether somebody should have that exclusivity.

22 THE COURT: That's right, we wouldn't have this  
23 case at all. No one in their right mind will file a  
24 bankruptcy case like this under the Reform Act.

25 MR. BAENA: And there has to be a reason why

1 Congress said, Eighteen months is enough, and other people  
2 ought to have a chance. And four years later, whatever  
3 reason there was from eighteen months to four years, just as  
4 Mr. Bernick asks, What's changed? The answer to the question  
5 is, Nothing has changed, and that's the problem. Nothing has  
6 changed. They're still pursuing a plan. By Mr. Bernick's  
7 argument, he suggests that there's more life to that plan  
8 which is on the table, then we believe there is, and you've  
9 heard all about that. And yet, he believes that the  
10 estimation proceeding is the preliminary event for that ill-  
11 founded plan. We say, That's where he's wrong. It's a  
12 preliminary event for any plan, and we shouldn't get through  
13 that event, which could take, as I said before based on their  
14 proposed case management orders, more than a year. In the  
15 case of PI, at least two years. We shouldn't get through two  
16 years of this process and say, Okay, now we've got six months  
17 to go through their plan.

18 THE COURT: Well, okay, this is somewhat getting  
19 into the case management side of things, but to the extent  
20 that it's relevant, let's talk about it for a minute. How  
21 soon do you want to try the cases?

22 MR. BAENA: That's not -- Judge, in all due  
23 respect, that's not the point. I mean we've got limitations.  
24 I've recognized those limitations. I agree with those  
25 limitations. The question is what are we going to do at the

1 end of that event, and the way they see it, Judge --

2 THE COURT: At the end of that event, I think, the  
3 following: If the estimation turns out to be more than the  
4 \$1.7 billion that the debtor says has to be the minimal  
5 number, that plan is not confirmable. So either the debtor  
6 has to modify it or exclusivity should be terminated and  
7 everybody will have a chance to come up with a plan with the  
8 number that's been determined to exist by the Court.

9 MR. BAENA: So, Judge, by that observation, we're  
10 not talking about a six month continuance here of  
11 exclusivity. You're talking about two years or however long  
12 that process takes.

13 THE COURT: So, if you want the process expedited,  
14 we can expedite the process. If that's the issue, if the  
15 timing of getting the claims estimated is the issue, then do  
16 the discovery quicker and let's get to trial.

17 MR. BAENA: You see, Judge, this is where I think  
18 it's unfair, the process is unfair. If the tradeoff for  
19 being able to file your own plan is that you get less  
20 procedurally in the estimation process in terms of time and  
21 preparation, that's not fair.

22 THE COURT: No, actually, Mr. Baena, we wouldn't be  
23 going forward to confirmation on any plan until the  
24 estimation's done. So if I --

25 MR. BAENA: That's correct.

1                   THE COURT: That's right. So if I terminate  
2 exclusivity now, all that's going to do is provide, you know,  
3 take a guess, one other plan, five other plans, none of which  
4 I'm going to let go forward any way until the estimation's  
5 over. So why don't we get through the estimation process.

6                   MR. BAENA: Because the fact of those plans, Judge,  
7 creates the playing field for a negotiation over a consensual  
8 plan.

9                   THE COURT: Oh, but, look, the playing field is  
10 there.. I mean, I'm a little bit at a loss to understand why  
11 there can't be negotiations with or without any plan on the  
12 table, but you've heard what the debtor thinks is the  
13 debtor's best effort. Frankly, knowing the way negotiations  
14 go in bankruptcy, I'm willing to believe that's there's  
15 probably a little wiggle room on behalf of the debtor just  
16 like there is on behalf of the Future Rep. and the Committee,  
17 because there's always wiggle room or you can't have an  
18 negotiation. So, folks, why you're not talking to each other  
19 is beyond me, but this is what I'm going to do, whether  
20 exclusivity is terminated or not, I am ordering all of you to  
21 have a face-to-face meeting next week. I don't care whether  
22 it's vacation schedules, period, that interfere, I want a  
23 face-to-face meeting in which you will see whether or not you  
24 can come to any essential agreement about any valuation issue  
25 that's in dispute, if there is one, about any estimation

1 issue that's in dispute, both property damage and personally  
2 injury-wise. Now, this can be structured. In fact, it  
3 probably should be, so that there is a meeting first with  
4 people interested in the property damage side and secondly  
5 with people interested in the personal injury side, but  
6 before there is any final agreement, you're all going to have  
7 to get together. You want an opportunity to see if you can  
8 do a consensual plan, this is it for everybody. For  
9 everyone. So, if the numbers work out, in a way that you can  
10 all agree, then there will be a consensual plan. If you  
11 can't agree, then we have to go through the estimation  
12 process, and until that estimation process is fixed, no  
13 plan's going to be confirmed. So, whether there's  
14 exclusivity or not right now, there won't be any movement  
15 toward getting a plan out the door unless you have an  
16 agreement or we get the estimation process done, otherwise,  
17 there can't be a plan. So, I think, Mr. Baena, you hit the  
18 nail on the head when you say, It's too long. I want it  
19 shorter, a shorter time frame. We need to get the hearings  
20 done sooner, and that includes me with the ZAI motion under  
21 consideration, I understand that, but all of it needs to be  
22 bumped up.

23 MR. BAENA: I have no further comments, Judge.  
24 Thank you.

25 MR. FRANKEL: Good afternoon, Your Honor. Roger

1 Frankel for Mr. Austern. I'm not sure if Your Honor has  
2 already decided this motion or not but --

3 THE COURT: No, I haven't.

4 MR. FRANKEL: -- I'll speak to it. First of all, I  
5 didn't realize our withdrawing our objection last time would  
6 be used against us this time. I think that what we wanted to  
7 see was the progress that would be made over six months, and  
8 we can envision a series of six month periods where very  
9 little is done. What I want to discuss is the plan that was  
10 filed by the debtor. It's very favorable to the commercial  
11 creditors, very favorable to equity, and it's very hostile to  
12 the asbestos claimants.

13 MR. BERNICK: Your Honor, I'm going to object,  
14 because again, it's exactly -- Indeed it goes beyond the  
15 confirmation issues that Your Honor determined in January  
16 were premature.

17 THE COURT: Folks, can we get through the argument?  
18 Overruled. Mr. Frankel, please proceed.

19 MR. FRANKEL: Thank you, Your Honor. The reason  
20 that I raise that, Your Honor, is that we think it is  
21 relevant to exclusivity the choices that the debtor makes  
22 four years into a case as to what kind of plan they file.  
23 This is a case where they could have filed a plan that --  
24 okay, perhaps they didn't want to have asbestos claimants  
25 voting. I understand why they wouldn't want to do that. We

1 think that by itself makes the plan un-confirmable, but  
2 that's not for today. But they provided that the asbestos  
3 claims, including the property damage, including the personal  
4 injury, including the future personal injury claims cannot  
5 exceed \$1.7 billion. Now they could have just as easily  
6 filed a plan that provided that if they exceed 1.7 or 2 or 3,  
7 what happens? That would not have been difficult, but they  
8 chose to file a plan that caps asbestos liabilities or makes  
9 their plan un-confirmable, and it's for that reason, Your  
10 Honor, that we believe that a second plan, or for that  
11 matter, other plans, but at least a second plan that at least  
12 says what happens if it turns out at the end of this long  
13 period that asbestos claims are in excess of 1.7 billion,  
14 which we think is very likely, what happens? We shouldn't  
15 have to go back to square one, give the debtor a chance at  
16 that point to modify their plan, or at that point have a  
17 battle over exclusivity. We think it would be very  
18 appropriate at the end of the estimation process, whatever it  
19 results in, that there be a confirmable plan on file. The  
20 only other thing I'm going to say, Your Honor, is I  
21 appreciate Mr. Bernick's remarks with regard to Mr. Austern.  
22 Mr. Austern made the determination to file this opposition  
23 because he does believe that a level playing field will  
24 result if exclusivity is terminated. Thank you.

25 MR. HURFORD: Good afternoon, Your Honor. Mark

1 Hurford of Campbell & Levine. Frankly, Your Honor, I  
2 prepared a more lengthy argument, but going third and at this  
3 point in time in the hearing, I guess it would be best for me  
4 to respond to some of the particular issues that have been  
5 raised. And one of the issues I would like to respond to was  
6 a comment from debtor's counsel which was raised a couple of  
7 times regarding why, and you, I'm sure, have read the PI  
8 Committee's papers, the PD Committee's papers, and the Future  
9 Rep.'s papers as to why the plan that's currently on file is  
10 un-confirmable. And the reason is, and this is cited in the  
11 debtor's own papers, that one of the factors the Court  
12 considers in determining whether to extend exclusivity, is  
13 whether the debtor has demonstrated reasonable prospects for  
14 filing a viable plan. Obviously, it knows our position.  
15 They have not filed a viable plan. Mr. Frankel just stated a  
16 few reasons for that. Mr. Baena stated a few more reasons  
17 for that. From our point of view, very simply boiled down,  
18 the Asbestos Committee has the right because they are  
19 impaired to vote on the plan under 1126. They also have the  
20 right, in fact, they're required to vote on the plan under  
21 524(g). We are required to vote. So, as far as the debtors,  
22 whether or not they're taking that position at this hearing,  
23 I'm really not sure, but they have demonstrated reasonable  
24 prospects for filing a viable plan. I don't think that  
25 exists. The debtors also comment on negotiations with

1 creditors. The element cited in the debtors' own papers is  
2 that whether the debtor has made progress in negotiating with  
3 creditors, there seems to be some disagreement as to whether  
4 or not the debtors have been negotiating with the PD  
5 Committee. I can tell you they have not been negotiating  
6 with the PI Committee, at least in the last six months. I'm  
7 not sure for the rest of these people. Regardless, the  
8 papers generally referred to, quote/unquote, "capitalized  
9 term, asbestos parties." That capitalized term, as far as I  
10 can see, was not defined in the motion. Regardless, nowhere  
11 in their motion do they say that they made progress in  
12 negotiating with the creditors. Not that they're  
13 negotiating, but that they've made progress. And I guess my  
14 last bit of comments, I would like to get back to the --  
15 somewhat the theme of the PI Committee's objection, and that  
16 is that throughout this case any legitimate movement that has  
17 been made in moving these cases forward has been done  
18 pursuant to comments that Your Honor has made on the record.  
19 Your Honor may recall that after the PI Committee objected to  
20 the fifth motion to extend exclusivity, that Your Honor  
21 instructed the parties to meet and confer. There was one  
22 teleconference that was held after that. By no means could  
23 that be considered a good faith attempt at reaching a  
24 resolution of these cases. Thereafter, this Court raised  
25 concerns in connection with an argument on a general

1 unsecured claim with regards to what progress the debtor was  
2 making and questioned the need to replace the debtors -- the  
3 debtors in possession to see if something can get done.  
4 Thereafter, in connection with the PI Committee, and I think  
5 there were other objections filed as well, to the debtors' --  
6 the Grace debtors' sixth motion to extend exclusivity, this  
7 Court raised the question whether or not these debtors would  
8 even be seeking a 524(g) injunction. That question could not  
9 be responded to, and your Court ordered them, by the next  
10 omnibus hearing, to either file a motion or to come and state  
11 on the record, unequivocally, what they were going to do.  
12 Because of Your Honor's statements, a Futures Rep. was  
13 finally appointed, and because of Your Honor's statements  
14 again at that hearing, which if I recall correctly, mentioned  
15 specifically the appointment of a trustee despite an  
16 acknowledgement of what that might do to the debtors'  
17 financial lenders may be necessary. At that point, the  
18 debtors came in and said, We will be filing a plan. Now, the  
19 second round of legitimate negotiations that went on in this  
20 case, went on around that time, and to my knowledge, nothing  
21 has gone forward since that period of time. Like I said,  
22 Your Honor, the steps that have been made, the actual steps  
23 in progressing this case, has been made by Your Honor pushing  
24 the debtors to do them. And what this really comes down to  
25 is litigation. Do we want to litigate for the next several

1 years of these cases or do we want to level the playing  
2 field, see if the other creditors can step forward and do  
3 what the debtors have failed to do, reach some agreement  
4 amongst the creditors. Now granted, there maybe there will  
5 need to be estimation. Maybe that estimation process can be  
6 streamlined as it has in numerous other cases I can think of.  
7 Armstrong, which considered the debtor's pre-petition  
8 settlement history. Owens Corning, which considered the  
9 debtor's pre-petition settlement history, which, by the way,  
10 it certainly was not an uncontested issue in Owens Corning.  
11 There were a number of motions filed to establish an asbestos  
12 personal injury bar date in Owens Corning that were never  
13 granted. And in that case, it was decided to move forward  
14 with estimation. Judge Wolin said in that case that if he  
15 didn't think there was appropriate information that he could  
16 rule on estimation, that he wouldn't, and he would consider a  
17 personal injury bar date. He apparently decided he didn't  
18 need it because, obviously, as we all know, he ruled. And  
19 more recently in Federal Mogul, the Asbestos PD Committee led  
20 by Rod Gotshall in that case, objected, but there was a  
21 hearing estimation that was based upon the debtor's pre-  
22 petition settlement history. I guess what we're asking for,  
23 Your Honor, is a leveling of the playing field, and I  
24 mentioned this in my papers. We will conceive that there's  
25 no alternative plan that's ready to be filed. But, Your

1 Honor, as we approach others to negotiate, where the general  
2 unsecured creditors under the current plan are supposed be  
3 getting a hundred cents on the dollar plus post-petition  
4 interest, and equity are going to be retaining such a  
5 substantial percentage;, where is the level playing field?  
6 Now, Your Honor's asked us to go into negotiation next week.  
7 We will certainly do that, but, to date the debtors haven't  
8 been able to move this case forward on this playing field,  
9 and we're asking that the playing field be leveled so that  
10 other parties can bring forward plans, and maybe these cases  
11 can be resolved much quicker. The time line that debtors'  
12 counsel has just proposed considers a hearing in December of  
13 2006 for asbestos personal injury claims. And, like I said,  
14 Your Honor, that's really what this all comes down to.  
15 Actually, I believe I said I was only going to respond to one  
16 more, two more things, but let me respond to one other issue  
17 raised by debtors' counsel and that is the assertion that the  
18 Asbestos PI Committee is concerned with the ongoing briefing  
19 for the debtors' proof of claim/questionnaire, and that we  
20 are suddenly objecting to the debtors' extensions of  
21 exclusivity because of the pressure felt by that. As the  
22 debtors' papers point out, they filed on day one a motion for  
23 a procedure which I've gone back and studied it, but it's  
24 very, very similar to the procedure that they're seeking to  
25 undertake now. That's been pending in these cases. If we

1 were really that scared and we're objecting to exclusivity  
2 because of that, we would have objected to every motion to  
3 extend exclusivity. We haven't. We objected to the fifth.  
4 We objected to the sixth, and we objected to the eighth. We  
5 didn't object to the seventh because there actually were some  
6 negotiations that took place during that time period, and we  
7 believe that's the relevant time period for Your Honor to  
8 consider. But there were some negotiations that took place  
9 and the debtor filed a plan. In the next six months, nothing  
10 has happened. We're back to square one, and as Your Honor  
11 knows, we would ask that you lift exclusivity, level the  
12 playing field, and allow the other creditors to see if we can  
13 move this forward -- case forward much more expediently.

14 Thank you.

15 THE COURT: All right, Mr. Hurford, you actually  
16 raised something that I wanted to inquire about and haven't  
17 yet, and that is, if I do terminate exclusivity, what does  
18 that do to the debtors on the business side? Because  
19 frankly, I'm not seeing much progress, and I think the case  
20 needs more. So, I don't know that I'm prepared to terminate  
21 exclusivity today, but I think I am prepared to put an end to  
22 exclusivity, an end date to exclusivity, and it's not going  
23 to be December of 2006.

24 MR. HURFORD: I'm not sure that I'm prepared to  
25 answer the question as to what that would do to their

1 business. I mean, obviously, they have their plan on file.  
2 They can continue to push for their plan. As Mr. Frankel  
3 pointed out, when we reach the end of the day, their plan --  
4 Well, maybe people can dispute whether or not their asbestos  
5 liabilities will exceed 1.7 billion, but assuming it  
6 surpasses that, which we certainly believe it will easily,  
7 their plan goes nowhere. If we can file another plan or we  
8 can reach some other agreement to litigate this case so that  
9 it's not six years old when we're finally getting estimations  
10 --

11 THE COURT: I've heard the argument. I want an  
12 answer from somebody to the issue, the financial issue.  
13 That's what I'm concerned about at the moment. What will the  
14 consequence, if there is a termination of exclusivity, be on  
15 the debtors' business side of things and the financial  
16 issues, not on the rest of this. That's what I'm concerned  
17 with.

18 MR. BERNICK: I don't know that anyone really here  
19 in court today really is sufficiently informed to address  
20 that. I know that I'm not on behalf of the debtor, and know  
21 that the debtor does not have representatives here that are  
22 capable of doing that. We would be happy to inform the  
23 Court, make a submission to the Court with respect to that  
24 particular issue, but I would like, Your Honor, just briefly  
25 to address some of the points and then maybe make a proposal

about going forward in light of Your Honor's question, if I could, and I'm not going to respond to all the different points that have been made. The fact of the matter is that there's a lot of discussion about the playing field and whether it's level or not. The principal obstacles to settlement are not a question of determination or resolve. They're not a question of management approach. They're not even necessarily a question of the approach of these committees. The principal obstacles to settlement, I participated in some of the discussions and in a lot of the internal discussions about where it's going, and I've also resolved other cases. The obstacles are facts. They're basic facts. People have a very different sense of what it is that they're entitled to. Your Honor gets a flavor with respect to the traditional property claims on how different the perspectives are of the debtor versus Mr. Speights. Your Honor has a perspective from the ZAI claims and how different the perspectives are of the litigants with respect to those claims. When it comes to personal injury, in a sense that's the most difficult problem because it's the most complex one, and there are also more procedural areas to resolving those claims because they're personal injury claims. But let me point out a couple basic public facts that ought to give Your Honor a flavor. Right now, Grace's stock is trading at values that are higher than they've been before. Grace's

1 stock has equity value. Why does it have equity value?  
2 Well, it has equity value probably in large part because of  
3 the legislation. Beyond the stock, however, you find the  
4 creditors, not only in the Grace case, but in other cases,  
5 indeed in cases where equity is no longer really at issue,  
6 like Owens Corning or like Federal Mogul. Those are all  
7 cases that were cited. Equity is not at issue in those  
8 cases. Who is it that's mounting the attack on the  
9 traditional estimation methodology that the personal  
10 injury claimants have used? It's the other unsecured  
11 creditors. So, it's not a question of equity. It's a  
12 question of, What are those claims really worth? And the  
13 problem is that there is a broad perception that is out there  
14 in large part because of the legislation but also as a result  
15 of data that's now been produced in these cases, in  
16 Congoleum, in this case, and elsewhere, data that shows that  
17 there is a major, major problem when it comes to how some of  
18 these claims are actually developed and lodged. The  
19 screening trailers, the mass factories of claims that are  
20 being used. You can't ignore that. That's just a fact  
21 that's out there. That's a problem to wrestle with in these  
22 cases, and unfortunately, there's no simple way to say, Well,  
23 what is really the impact of that? Now, Judge Farnan, in the  
24 context of the Owens Corning case took an approach that said,  
25 Well, here's a high estimate, here's a low estimate. Boom.

1 I can't tell you the math but here's something that's in  
2 between. I suppose that's one way to go about doing  
3 business. But even he considered the impact of those  
4 different issues about whether the claims are really bona  
5 fide claims or not. So, this problem of whether the PI  
6 claims really work is an enormous problem, and there has to  
7 be a methodology for dealing with it. That's what creates  
8 the barrier. If you lift exclusivity and other people file  
9 plans, we know exactly what it is that's going to happen.  
10 People will come in and simply reflect in their plans their  
11 particular perspective on what their claims are worth. And  
12 they'll then seek to battle out, now in the context of  
13 competing plans, exactly the same issues that are the subject  
14 of the estimation.

15 THE COURT: I agree, which is why we have to do the  
16 estimation unless you can come to a settlement. Look, there  
17 are limited ways in which you can estimate anything. Whether  
18 the settlement history is something to be considered seems to  
19 be an issue that's dividing this case that hasn't divided all  
20 other cases. That's one reason why the trials have been  
21 somewhat different in some of the other cases.

22 MR. BERNICK: Your Honor, I would disagree a little  
23 bit.

24 THE COURT: Even consensual.

25 MR. BERNICK: In the Owens Corning case, there was

1 no issue about whether settlement history should be used as  
2 the predicate for the estimate.

3 THE COURT: Well, I agree.

4 MR. BERNICK: And the reason for that is that no  
5 one believes -- everybody knows in the Owens Corning case  
6 there is no equity. So, it's just a question of  
7 proportionality between the different claimants -- between  
8 the different creditor constituencies. And that's happened  
9 before. But there is --

10 THE COURT: But, look -- but this plan, as you  
11 currently -- as the debtor currently has it crafted, this  
12 plan has to be a one hundred percent plan for all allowed  
13 claims.

14 MR. BERNICK: That's correct. That is absolutely  
15 correct, and people say -- people say, Well, it's not  
16 confirmable on its face. We went through the technical issue  
17 of whether there's impairment or not on the face of the plan,  
18 but whether it's confirmable or not is inevitably driven by  
19 their sense of how the facts will turn out. If it turns out,  
20 and I will tell Your Honor that a lot of people are standing  
21 up talking in this Court who don't have a clue about what  
22 went into the formulation of the plan. They didn't even talk  
23 to their clients, and they're making representations about  
24 what the plan is or is not. This plan was constructed in  
25 large part driven by the very settlement discussions that

1 have taken place. There are different pots of money that  
2 have been set up based upon the debtors' sense of how to  
3 accommodate conflicting views among the different creditor  
4 constituencies. So we put money in those pots. If it turns  
5 out that we're right about the estimates, that is that there  
6 will be payment in full for the symptomatic claimants, that  
7 the asymptomatic claimants will be as unsuccessful as we  
8 believe that they are and is the marketplace for the  
9 resolution of claims, now says that they are. Asymptomatic  
10 claimants are nowhere in those states and the market for  
11 their claims has dropped. It's almost like what happened at  
12 Dow Corning in the disease claims. It's dropped through the  
13 floor. So if we're right on how much money should be  
14 allocated to those claims, and we're right about Mr.  
15 Speights' claims, which doesn't take much scrutiny to  
16 determine, and we're right about Mr. Dye's claims which are  
17 worth far more money than Mr. Speights' claims are, and we're  
18 right about CAI which we believe that we are on the facts,  
19 this plan was crafted to give money to all constituencies  
20 weighing and balancing their radically different views about  
21 what the claims are worth. This is not a situation of being  
22 such a debtor friendly plan. This is a plan that most of all  
23 is driven by a process that says, Here's the money that we  
24 think belongs here, but let the estimation determine what it  
25 is, and those facts will drive any plan. They come in there

1 with their other plans, we're going to be back at ground  
2 zero. So, the question becomes, Your Honor, I think the  
3 question that Your Honor focused on, Your Honor's unhappy  
4 with the progress of the settlement negotiations. We are  
5 unhappy. There was a concerted effort to try to get that  
6 plan before it was filed to be supported by everybody, and  
7 then when it became clear that we weren't going to get  
8 certain constituencies, we didn't give up, and we said, Well,  
9 let's see how many more we can get, and we got equity and we  
10 got the unsecured. We were hammering tans to get property  
11 to sign onto this plan. So, what now would happen if Your  
12 Honor were to say, I'll extend exclusivity, but by God, I  
13 want to know (a) if there's an impact on the debtor if it's  
14 terminated, and (b) it's going to be extended no further than  
15 X date. What does Your Honor suppose is going to happen? If  
16 there had been objections and delays as you're now going to  
17 hear there have been objections and delays to our case  
18 management orders before, they are now going to be -- Your  
19 Honor, it's not working out.

20 THE COURT: Look, folks, let me explain something.  
21 Orders are signed by me. If you folks can't agree on a case  
22 management order, you're going to get one, and it's going to  
23 be my dates and my time frames. I would like your input into  
24 that because I would like to know reasonably how much time  
25 you need for discovery. But if it's overly delayed, it's not

1 going to work, I will give you different dates, and that's  
2 how it's going to be. We're simply going to get this done.  
3 And I don't see, Mr. Bernick, that we're getting it done. I  
4 really don't.

5 MR. BERNICK: Your Honor, we have before you the  
6 case management order for property damage. We were prepared  
7 to have expert reports exchanged late this summer or early  
8 fall. It was the property damage claimants that said, No,  
9 we're not going to be ready. So, we've accommodated them,  
10 and we've extended the schedule some more.

11 THE COURT: All right.

12 MR. BERNICK: Your Honor, we're prepared to do this  
13 tomorrow.

14 THE COURT: Mr. Bernick, the property damage and  
15 the personal injury can march side by side. They don't have  
16 to, despite Judge Wolin's original game plan, which may have  
17 made sense back in whenever he was appointed to the case, it  
18 doesn't have to be the way it is now. So, there isn't any  
19 reason why they can't march side by side. I'm happy with a  
20 form if that's what the debtor wants to try to do to see  
21 whether or not some vital information on the personal injury  
22 side can be adduced so that everybody can make use of it for  
23 whatever your position's going to be on the estimation  
24 hearing. But that can be done in a much more rapid fashion  
25 than requiring a trial in December of next year.

1 MR. BERNICK: Well, we're prepared to do that.  
2 We're absolutely prepared to do that. But, Your Honor, you  
3 see how even the dialogue starts to effect the substance of  
4 the process. Unless the information is gathered and gathered  
5 carefully, the process is no better than the information. If  
6 the process is operating under a time constraint that is  
7 imposed because the parties won't settle rather than being  
8 imposed because the information can't be gathered, then what  
9 you're going to do is end up sacrificing the quality of the  
10 information which will sacrifice the quality of the  
11 estimation and make it more amendable to attack. We believe  
12 that this schedule can be compressed, we absolutely do. And  
13 we're prepared to do anything that's necessary to expedite  
14 this schedule. All that we want is the information. We'll  
15 propose to the Court -- we have already a CMO that's before  
16 the Court on the property side. We'll propose a CMO to the  
17 Court with respect to personal injury that's more  
18 accelerated. We're happy to do that, but, Your Honor, if  
19 that process is going to be followed seriously, like any  
20 other piece of litigation, (a) you can't give one side or the  
21 other or anybody an external point of leverage. And here the  
22 external point of leverage is exclusivity. If Your Honor is  
23 not satisfied with how the litigation is working or Your  
24 Honor is not satisfied that the parties are not operating in  
25 good faith from a settlement point of view, I would urge that

1 Your Honor be driven by those as factors rather than  
2 artificially setting a date at this time because otherwise  
3 people will gain the date. It happens every time.

4 THE COURT: I've ordered you to get together next  
5 week. I want you to see whether or not next week you can  
6 come up with an agreed upon schedule for the property damage  
7 on the one side and for the personal injury on the other.  
8 That includes a claim form which can be produced. I will  
9 approve a claim form of some sort. I'm not saying what sort,  
10 but I will, folks, approve a claim form because it may be  
11 useful to all parties in the estimation, and I will consider  
12 it appropriate discovery. Rather than taking depositions of  
13 400,000 personal injury plaintiffs, we're going to do it  
14 through claim forms. So, it will be approved. Now, you  
15 folks can get together and see if you can agree on the  
16 information. I don't expect a 20-page claim form, Mr.  
17 Bernick. That will be outrageous. It will not be necessary.  
18 But some basic information, yes. I think the debtor and all  
19 the other parties will benefit from it. So your task, next  
20 week, all of you, I'm not speaking just to Mr. Bernick,  
21 everyone is to get together in a face-to-face meeting for  
22 however long it takes. Take your toothbrushes to see whether  
23 or not you can get case management orders that are agreed on  
24 for both the property side and the personal injury side.  
25 There is no need to piggyback those two orders. They can be

1 done simultaneously. That's number one. Number two, if you  
2 can't agree, then before the July 18th hearing, you will  
3 submit your separate versions, and I will craft a case  
4 management orders in both of them and a personal injury claim  
5 form. You'll have all your appeal rights. I will not stay  
6 the issue pending appeal because we're going to get this  
7 done. This case needs to be out of bankruptcy. There is no  
8 benefit to anybody having it here this long. It should be  
9 done. Mr. Bernick, the plan has what I think is a defect.  
10 Whether it's fatal or not, I don't know, but it has no  
11 alternative to what happens in the event that the personal  
12 injury estimates are greater than what the debtor thinks the  
13 cap should be, and since it has to be a hundred percent plan,  
14 there has to be some alternative.

15 MR. BERNICK: It does in fact have --

16 THE COURT: What does it say?

17 MR. BERNICK: -- a pressure relief valve on the  
18 asymptomatic side. But, Your Honor, again, I --

19 THE COURT: The symptomatic side could be higher, I  
20 don't know.

21 MR. BERNICK: It could be, Your Honor, but again,  
22 all the questions are right on but the difficulty is that  
23 when you say that that is a defect, there are enormous  
24 ramifications for that, and --

25 THE COURT: Well, I will use the word --

1 MR. BERNICK: -- I'm not -- What I mean --

2 THE COURT: -- problem.

3 MR. BERNICK: -- to say is that you really have to  
4 get down to the analysis of, Well, what happens if the  
5 estimate turns out to be higher, the same, or lower? What  
6 happens to that alleged defect. For example, if Your Honor  
7 does an estimate of the symptomatic claims and says the  
8 estimate is below the amount of money that's there, is there  
9 really a defect at that point in time? If there is not, then  
10 Your Honor's question was raised by counsel which is, What  
11 if? What does saying that the what if must be addressed in  
12 this plan do to the negotiation process. Inevitably it  
13 means, that one party's going to sit there and they're going  
14 to try to bust the cap --

15 THE COURT: Fine.

16 MR. BERNICK: -- solely for saying that the plan is  
17 non-confirmable.

18 THE COURT: Look, the number at the moment is not  
19 relevant. What's relevant is what dividend the debtor's  
20 going to pay to whoever is entitled to get it. Let's get  
21 down to the fact that that's how bankruptcy plans work. The  
22 number is only symptomatic of what that dividend  
23 expectation's going to be. I mean, the debtors may have an  
24 expert already who's willing to put the number at 1.7  
25 billion, maybe that's the case. The other committees may

1 have -- just to pick numbers out of the air -- estimates who  
2 are willing to say the number's \$50 billion.

3 MR. BERNICK: And the key is, Your Honor, that once  
4 the claim -- We're all operating -- If it were just a  
5 question of that, it would have been done. Why can't people  
6 do it? It's not just because they have different models.  
7 It's not even because they have different approaches. It's  
8 because they don't have the information. If you got the  
9 information, you can do deals. Let me make one last thing,  
10 and I'll -- Your Honor, then I promise I'll shut up.

11 THE COURT: Well, who has the information?

12 MR. BERNICK: The plaintiffs' lawyers do because we  
13 don't have -- that's the whole idea of the claim form.

14 THE COURT: So does the debtor on the settlement  
15 side. So --

16 MR. BERNICK: We've given it on the settlement  
17 side. The problem is that you cannot -- and I'd try if I had  
18 time, you can't take the history of settlement and determine  
19 from that reliably the impact --

20 THE COURT: Mr. Bernick, what you can determine  
21 reliably from that is how the debtor has settled cases in the  
22 past.

23 MR. BERNICK: Right.

24 THE COURT: This is a trust that's going to be  
25 created.

1 MR. BERNICK: Right.

2 THE COURT: There will be a pool of money.

3 MR. BERNICK: Right.

4 THE COURT: Against that pool of money, there will  
5 be one of several forms one of which may be, in quotes, "a  
6 settlement". Everybody who approves a claim up at a certain  
7 level will agree by voting for this plan that their  
8 distribution out of that trust will be a settled sum. Of  
9 course, it's relevant.

10 MR. BERNICK: Sure. That already is in the plan.

11 THE COURT: I know it is.

12 MR. BERNICK: We've already done that.

13 THE COURT: I understand that. The problem is that  
14 there is no upside in the event that the debtor's wrong on  
15 the caps. If the debtor has overstated the caps, everybody  
16 benefits. Nobody's going to complain in that sense.

17 MR. BERNICK: Your Honor, I don't mean to argue  
18 with you, but at the end of the day -- I mean, I could draw  
19 you a picture that says, Okay, you've got that settlement  
20 history, and what you're really going to do is if they get  
21 their way, they extrapolate off from the top of it, you know.  
22 I won't argue. You already know what that issue is. The  
23 question is, depending upon which issue comes out that is  
24 asymptomatic, as an example, or requirements for product  
25 identification, as an example, depending on how those issues

1 come out, how much of that prior curve do you strip away?

2 THE COURT: I agree.

3 MR. BERNICK: Okay. Now, that's what the claim  
4 forms will tell us.

5 THE COURT: I've already said --

6 MR. BERNICK: Okay.

7 THE COURT: -- I will agree to some form of claim  
8 form, not a 20-page claim form.

9 MR. BERNICK: Well, take a look -- I don't know  
10 offhand how long it is. Whatever it is that Your Honor said  
11 before and that we complied with it, it's a shorter form. It  
12 is detailed. It's going to require work because unless you  
13 do it, you end up with the same kind of claim manufacturing  
14 that we've had in the past. But I have a way, Your Honor, I  
15 think, and I'll just say it. It's two propositions:  
16 Propositions one, is that rather than setting some date now  
17 or a week from now or two weeks from now for termination of  
18 exclusivity, we focus on getting the litigation track set,  
19 including the part of it that will involve obtaining  
20 information. And Your Honor, we'll meet and confer on that,  
21 and if we can't agree, we'll comply with Your Honor's order,  
22 we'll submit schedules and Your Honor can enter the order.  
23 That really, after all, was where we were back in 2001 with  
24 Judge Farnan. With respect to the settlement side and the  
25 need for Your Honor's sense that the debtor is not acting

1 promptly enough, and I won't argue with that --

2 THE COURT: It's all parties, Mr. Bernick. I  
3 haven't -- I'm hearing that the debtor hasn't made any  
4 efforts to get together. I'm not hearing from the debtor  
5 that anybody else's calls have been unanswered. You're all,  
6 as far as I can -- I mean, the debtor's not saying, Gee, the  
7 Asbestos Committee called and we said, No, we can't talk to  
8 you. Nobody's negotiating.

9 MR. BERNICK: To the contrary. We have pushed it,  
10 and that's why it's so frustrating to hear people who don't  
11 know.

12 THE COURT: Stop.

13 MR. BERNICK: Okay.

14 THE COURT: I have ordered you to get together.  
15 That's where I'm going. I'm ordering you, and frankly, in  
16 five minutes we're terminating this case until next week, so  
17 talk fast because that's it.

18 MR. BERNICK: I've got my second point and I'll  
19 shut up because I think it's a good one that will solve a lot  
20 of problems. If Your Honor wants to bring somebody else into  
21 this process to be able to report to the Court on whether in  
22 fact the parties are being diligent in operating in good  
23 faith in the settlement discussions, we've not done that so  
24 far, and maybe that's a way of Your Honor developing better  
25 assurance that the settlement process is moving forward. I'm

1 not suggesting some kind of, you know, big deal type of  
2 thing. I want some way of breaking the information gap  
3 that's bothering Your Honor. Your Honor doesn't know what's  
4 happening on the settlement side because people are making a  
5 bunch of representations and you don't know what's accurate.  
6 I think it might make sense to have somebody that's in a  
7 position to know what the story is so that Your Honor doesn't  
8 have to do something like set a court date or an exclusivity  
9 termination that is driven by your sense of the lack of  
10 progress but inevitably will have unintended consequences  
11 with respect to the negotiation itself, and to my observation  
12 also the litigation. There's a much more focused cure which  
13 is to get a source of information to Your Honor on whether in  
14 fact the settlement discussions are taking place and are  
15 active. And that's my last proposal.

16 THE COURT: Did you get into our calendar yet? See  
17 if you can get Connie and get our calendar. Gentlemen, this  
18 is what I'm going to do. I am going to grant a brief, and I  
19 do mean brief, extension of exclusivity until I get this set  
20 for an argument date in Pittsburgh, at which we're going to  
21 address, however long it takes, bring your toothbrushes, the  
22 case management order both for property damage and personal  
23 injury, if that's necessary, the claim form, and the  
24 extension of exclusivity. Mr. Bernick, to a certain extent,  
25 the consequences in terminating exclusivity would be

1 intended, because if I don't see substantial progress, maybe  
2 it's time that somebody else gets a shot. What I do not want  
3 to do is terminate what seems to be a pretty viable business  
4 on behalf of the debtor by a termination that may have  
5 consequences that I don't intend on the business side. So,  
6 for that hearing, I want to know specifically from the debtor  
7 and anybody else, financial advisors, what the consequences  
8 will be. I consider that to be a significant issue in this  
9 case, particularly where the debtor is telling me it's  
10 solvent. Now, do I know whether the debtor's solvent?  
11 Obviously, no. That's not an issue that has come before me  
12 in a litigated or even a settlement context. So, I don't  
13 know. I don't know whether or not the debtor's plan is --  
14 I'll use the words "rich enough" to satisfy the claims. I  
15 simply don't know. I haven't heard the evidence, and it's  
16 time that I start getting the evidence. All of you are  
17 charged with getting in touch with each other to negotiate a  
18 settlement. All of you, and I don't, from this day forward,  
19 want to hear one complaint that somebody hasn't contacted  
20 somebody else to move the case to get forward with  
21 settlement. Mr. Bernick, I'm holding you personally  
22 responsible for making calls on a weekly basis to start  
23 settlement discussions and, folks, you'd better be there to  
24 answer them or return those calls promptly. Because if I  
25 hear that you haven't then I will have some other

1 consequences. Mr. Hurford -- No, I want -- give me like two  
2 months' worth, because I'm going to try to schedule some  
3 dates. Mr. Hurford?

4 MR. HURFORD: Thank you, Your Honor. Having heard  
5 that I'm somewhat hesitant to be standing here, but obviously  
6 this motion, the objection to the motion to extend  
7 exclusivity has gone far afield and Your Honor seems to have  
8 made at least a preliminary ruling that you will be entering  
9 an order approving some sort of asbestos personal injury  
10 claim form.

11 THE COURT: I expect to.

12 MR. HURFORD: Well, I rise to ask Your Honor to at  
13 least withhold decision on that issue. First of all, and as  
14 Your Honor knows, Mr. Lockwood typically addresses matters  
15 regarding asbestos, personal injury --

16 THE COURT: Yes, and I've heard his recitation in  
17 at least six other cases, and I doubt that it's going to  
18 change in this one. I could probably give it back to you.

19 MR. HURFORD: Well, it probably won't, Your Honor,  
20 but I guess his recitation is somewhat successful because,  
21 from what I know, in the Babcock case an asbestos personal  
22 injury bar date, proof of claim form was entered and thrown  
23 aside.

24 THE COURT: Why?

25 MR. HURFORD: And that Court finally said, No --

1                   THE COURT: I said nothing about a bar date. I  
2 said a claim form. And the reason for the form is that the  
3 debtor's view as to how an estimation hearing is going to  
4 take place and the rest of the world's view is very  
5 different. I want to see what comes out of the claim forms.  
6 The debtor has the right to discovery to know what the  
7 current claims are, and that will be a much better basis for  
8 estimation of current claims and possibly future claims than  
9 anything else. So, let's get it done. Let's find out what  
10 the claims are, what people say they have by way of claims.  
11 That number may turn out to be some astronomical number which  
12 is meaningless, but it may also, if counsel does their job  
13 right, be a legitimate basis for figuring out what the claims  
14 are.

15                  MR. HURFORD: Your Honor, that was the same track  
16 that was taken in USG and Judge Wolin decided was not  
17 fruitful.

18                  THE COURT: I don't care what the other judges have  
19 decided. This is this case, this is how we're going to do  
20 it. So, go work on a claim form that you can live with,  
21 folks, you're going to get one. If you can't work on one  
22 that you can live, I'm going to do it, and you know a whole  
23 lot more about it than I do.

24                  MR. HURFORD: I understand, Your Honor, but this  
25 exact issue is pending briefing. The debtors' motion for

1 approval of this case management order and their proof of  
2 claim or questionnaire or whatever you want to call it is  
3 under consideration. Our objection is due at the end of the  
4 month, which reminds me of an issue that I need to raise with  
5 you at the end of the hearing, but the matter hasn't even  
6 been briefed, Your Honor, and if Your Honor --

7 THE COURT: Okay, you can brief it.

8 MR. HURFORD: -- will give us time.

9 THE COURT: Yes, you certainly may brief it, and  
10 you can brief in light of the fact that in all probability  
11 you're going to end up with a claim form, please. You've  
12 argued. You've heard what I have to say, please, let's get  
13 to it.

14 MR. HURFORD: Thank you.

15 THE COURT: Mr. Hurford, what other issue did you  
16 want to raise?

17 MR. HURFORD: I'm not sure how much of this history  
18 you'll need me to recite, but if Your Honor will recall the  
19 debtors had a deadline to file their opening brief. In  
20 connection with filing the opening brief, they filed a motion  
21 to exceed the page limitation and asked for an additional day  
22 to file their briefs. Aside from their motion, their  
23 memorandum of points and authority is 75 pages long, aside  
24 from all the exhibits which number several hundred pages.

25 THE COURT: Okay.

1 MR. HURFORD: What I'm getting to is, the parties  
2 jointly submitted a motion, and it was all major  
3 constituencies, asking that the local rules with regards to  
4 page limitations be waived. Your Honor black-lined that  
5 order down to 60 pages. What we're asking for is an ability  
6 to file an answering brief and the equivalent number of pages  
7 as the debtors, which is 75 pages. We don't feel --

8 THE COURT: Fine, okay, fine.

9 MR. HURFORD: Thank you.

10 THE COURT: Seventy-five pages is fine.

11 MR. HURFORD: We appreciate it.

12 MR. BAENA: Your Honor, in regard to the property  
13 damage CMO, just so that there's no misapprehension, Your  
14 Honor will recall that in April I shared with you that it was  
15 revealed to us shortly before that hearing that the debtor  
16 intended to take on the science, if you will, of all of the  
17 products that engender property damage claims. Your Honor  
18 shared our surprise by that revelation. At the end of that  
19 hearing we indicated that we were going to continue to work  
20 on a case management order, and we came back before you in  
21 May, and at the May hearing apprised you that because of the  
22 deliberations and what have you, both sides came to the  
23 conclusion that the dates had to be changed.

24 THE COURT: Yes.

25 MR. BAENA: Okay, and we were supposed to work on

1 it again. Ms. Baer indicated that she was going to be  
2 talking to her property damage litigation experts within the  
3 next week after that hearing. Just this weekend, on  
4 Saturday, we received the very next iteration of a case  
5 management order.

6 THE COURT: Well, if you're ahead of me, I haven't  
7 seen it yet.

8 MR. BAENA: It hasn't --

9 THE COURT: So, I'm not addressing it today.

10 MR. BAENA: I'm not addressing it, but I want to  
11 make sure you understand, Judge, that the issue isn't just  
12 timing. The issue is what are the issues that are engendered  
13 by the estimation process in respect to property damage. And  
14 this new CMO creates a whole new track that I've had about a  
15 day to digest at the present time, and it creates this whole  
16 new track that has to do literally with two matters that  
17 weren't even subject of the prior CMO. My point, Judge, is  
18 that --

19 MR. BERNICK: Your Honor, we -- I have to object.  
20 This --

21 THE COURT: Mr. Bernick, please. Let's get  
22 finished with this. I've heard enough. Mr. Baena, what,  
23 what's the point?

24 MR. BAENA: My point is, Judge, we're not going to  
25 just be arguing about time. We're going to be arguing about

1 scope.

2 THE COURT: I understand that.

3 MR. BAENA: Okay. And I just wanted to make sure  
4 that whatever you schedule gives us an opportunity to argue  
5 about scope, brief and argue about scope.

6 THE COURT: I told you to bring your toothbrushes.  
7 I meant it.

8 MR. BERNICK: In preparation for that, it would be  
9 helpful if counsel for the Property Damage Committee could go  
10 back to the pleadings that were filed in the first day of  
11 this case, set out the scientific issues, defenses, including  
12 this defense and in the Armstrong decision itself. The whole  
13 idea that this was a surprise last time is completely  
14 apocryphal.

15 THE COURT: Mr. Bernick, I wasn't involved in the  
16 case in the first day of the case either, and I'm not going  
17 back and take a look at that either. File something that's  
18 current so we all know what's going on in the case and what  
19 the debtor's perspective is. I want to see some movement,  
20 and frankly, this little bit of infighting is getting to the  
21 point where it's not helpful. So, if I need new counsel --  
22 not new counsel, but a trustee for the debtor, if I need new  
23 counsel for the committees, sobeit, folks. That's the level  
24 I'm at. I'm tired of the infighting. I expected to see some  
25 progress, and I expect to see it by the time we have the next

1 hearing with respect to these case management orders. And if  
2 you can't do it, as I said earlier you'll get the orders from  
3 me the way I craft them. So, take your best shot, because as  
4 I said before, you're much more expert at this than I am.  
5 I'll do my best. Yours is probably better. Mona, dates.

6 Well, actually it looks as though the best date to  
7 try to do this may actually be the day after the next omnibus  
8 hearing, which is July 19th, the next omnibus is the 18th. I  
9 apparently have half a day on Tuesday, July 5th. I'm sure  
10 none of you will be too thrilled with that, but it's only  
11 half a day. And that's it, until the 19th of July. That  
12 would give you virtually three weeks or almost a month to get  
13 together, several times, to negotiate and see what you can  
14 resolve and to file whatever briefs you'd like me to see on  
15 whatever issues you still find are pending that you've not  
16 been able to resolve. So, how's July 19th for a hearing  
17 date? Which means we will not have any of these issues on  
18 the July 18th calendar. We will have business related  
19 issues, not case management, not plan, not exclusivity. They  
20 will all be on July 19th, not issues related to the plan.

21 MR. BAENA: Is there going to be a briefing  
22 schedule, Judge?

23 THE COURT: Well, we'll have to develop one. If  
24 July 19th is fine, let's pick that and we'll work backwards.

25 MR. BAENA: If I could be so bold, Judge, I have a

1 trial that starts the following week in Vermont, and that is  
2 a little bit of a difficulty for me, but if this is it, I'll  
3 just abide by the Court's request.

4 THE COURT: That's the day that I have in July.  
5 Would you prefer to do it in August? I mean --

6 MR. BAENA: (Microphone not recording.)

7 THE COURT: Then we're back to everything slipping  
8 again.

9 MR. BAENA: Well, I'll abide by whatever the Court  
10 wishes.

11 THE COURT: All right, the debtors -- I'm not sure,  
12 when does debtors' exclusivity terminate now?

13 MS. BAER: Your Honor, it would have terminated but  
14 we filed the motion so the bridge order gives us until today,  
15 and you need to enter an order today.

16 THE COURT: All right, debtors' exclusivity period  
17 is extended to the conclusion of the hearing on July 19.  
18 That hearing will be in Pittsburgh. Actually -- Yeah, it  
19 depends on transportation time home. Let's plan on that  
20 being in Pittsburgh but it's possible, because I'm here on  
21 the 18th, but not the 19th, so it's possible that we may be  
22 able to do it here. Are you going to have other issues teed  
23 up for the 18th?

24 MS. BAER: Your Honor, there are a couple of  
25 motions. They're not particularly significant. They're

1 business related type motions.

2 THE COURT: Are they likely to settle so that  
3 there's no hearing that's going to be held?

4 MS. BAER: They're very likely. The information on  
5 them has been shared. One of them's a long time incentive  
6 plan, we haven't heard back, but it's an extension of last  
7 month's, and I can't even remember any other thing that's on  
8 right now. It's minimal.

9 THE COURT: Right. What I'm trying to get to is  
10 would you prefer to move everything to the 19th in Pittsburgh  
11 and not have an omnibus date on the 18th, but that's assuming  
12 -- I mean, I want the majority of the day on the issues we've  
13 been talking about today, not on the debtors' business  
14 issues.

15 MS. BAER: Yes, they're very minimal.

16 THE COURT: Does everyone agree to that? All  
17 right. The omnibus hearing date is continued to July 19 in  
18 Pittsburgh beginning at -- Do you want to start at 8:30 or 9  
19 o'clock, you pick; 8:30?

20 MR. BERNICK: I think we'll start at 9 o'clock.

21 THE COURT: Nine, all right. Okay. From the  
22 debtor, within two weeks from today, let me give you a date,  
23 see if that works. No, that won't work. It's going to have  
24 to be a little shorter. By July the 7th, I want a report as  
25 to the consequences of termination of exclusivity from the

1 business perspective. I'm not asking about the bankruptcy  
2 consequences. I understand those. I think you all know from  
3 the questions I was asking earlier, I'm concerned about, for  
4 example, the debtors' lines and letters of credit, the  
5 debtors' financing facilities, the debtors' business plans,  
6 whether there is -- I'm not sure that some termination would  
7 affect any of that, but I want to find out for sure.  
8 Everybody else may respond to that by July the 12th in the  
9 form of another report, if you choose. All right, Mr. Baena,  
10 what issues is it that you want a briefing schedule for?

11 MR. BAENA: The scope of the PD estimation  
12 procedure.

13 THE COURT: All right, well let me start with this:  
14 When next week are you folks getting together to see what you  
15 can resolve on the case management issues for both property  
16 damage and personal injury? They can be separate meetings.  
17 They don't need to have all of you together unless you want  
18 the same schedule, which I doubt.

19 MR. HURFORD: Your Honor, I apologize. I'm really  
20 not in a position to respond to that question. As most of  
21 the people in this courtroom know, Mr. Inselbuch heads that  
22 up for the Asbestos PI Committee. I have heard some  
23 discussion that he has to travel to England in connection  
24 with Federal Mogul.

25 THE COURT: You've got enough of a firm. He

1 doesn't have to be there personally. There are lots of other  
2 people in the firm. That's one reason why his firm gets  
3 appointed as counsel, that they have enough people to staff  
4 it. So get it staffed.

5 MR. REINSEL: Your Honor, Rob Reinsel. I'm from  
6 Kaplin, really sitting in for Mr. Lockwood. Mr. Lockwood is  
7 out of the country I know this week and next. Regardless of  
8 Mr. Inselbuch's schedule, we will accommodate the Court.

9 THE COURT: All right, what day do you want to meet  
10 next week or can I just say next week and you folks can work  
11 it out, but I don't expect to hear that you didn't meet.

12 MR. REINSEL: I think the latter would probably be  
13 more preferable, Judge.

14 THE COURT: All right, property damage next week  
15 and personal injury next week to work out two case management  
16 orders. All right, so it will be after next, I guess, Mr.  
17 Baena, after your meeting that your briefing would be due, so  
18 next week is the week of the 3rd of July and the hearing's on  
19 the 19th, which is a Tuesday. So I need briefs, I guess from  
20 all sides at one time, with no opportunities for replay.  
21 You'll just have to all tell me what you think the issues are  
22 and brief them. Probably you can come up with a list of  
23 issues at your meeting, I would think. You probably will  
24 agree on the issues. How to handle them is probably going to  
25 be the difference.

1                   MR. BERNICK: Your Honor, I think that that's  
2 probably the best idea. We ought to be able to reach at  
3 least agreement on the areas in which we disagree, and I  
4 think that simultaneous briefs probably makes sense. We have  
5 been through this process before. I think it would be -- I  
6 suppose what that means is that we'll end up taking pieces of  
7 the brief that we have already submitted in connection with  
8 the order. It will be, of course, about form and a kind of  
9 recasting them to fit whatever group of issues we come up  
10 with during our meeting next week. That's probably where all  
11 this is headed. Do you want that briefing to be in a sense  
12 all that you have to look at in connection with the hearing  
13 on the 19th? I think you probably just have to have  
14 simultaneous briefs and that will become the briefing with  
15 respect to CMO and further extension of exclusivity. Does  
16 that make sense?

17                  THE COURT: I'm not sure that there's any more  
18 briefing needed on the exclusivity; is --

19                  MR. BAENA: It's just a report that --

20                  MR. BERNICK: That's right. That's just the CMO  
21 and -- right.

22                  THE COURT: All right, so how about by July 12th,  
23 all briefs due.

24                  MR. BERNICK: It should be whatever Your Honor  
25 needs by way of lead time for the 19th.

1                   THE COURT: Well, I've got a real problem if I  
2 don't get the briefs the morning of the 12th, even getting  
3 them before the hearing on the 19th.

4                   MR. BERNICK: So we should file them at that time?  
5 I mean, I hate to say it, but would it be better if we do it  
6 on the 11th?

7                   MR. BAENA: We've previously e-mailed briefs of  
8 this sort to you, Judge.

9                   THE COURT: I know, but I think I'm going to be at  
10 a place where I'm not going to have access to e-mail, I  
11 believe, Mr. Baena, and that's what I'm worried about.  
12 Actually, I could get them by e-mail if you can do them in  
13 Word, not in Word Perfect.

14                  MR. BERNICK: I really -- I don't know, that kind  
15 of leaves out there the question of whether you ultimately  
16 get them. I remember that happening before in an adversary  
17 hearing.

18                  THE COURT: Well, all right. This is what I'll do.  
19 I'll give you an address where the briefs can be delivered to  
20 me in hard copy. I'll give it to one person, one person  
21 collect all the briefs, and I'll want them by -- I have to  
22 have them on the morning of the 13th at the place I'm going  
23 to be because I'm only going to be there the 12 and 13th, and  
24 I'm leaving again, and they won't catch up with me. That's  
25 the problem.

Corrected Page 102

Corrected: 7/1/05

1 MR. BERNICK: We'll undertake -- If it's appropriate,  
2 we'll undertake responsibility for being the collecting point  
3 and then we'll figure out in order to get it to Your Honor by  
4 the morning of the 13th when we need it so that we can put it  
5 on an airplane or whatever to have it get there.

6 THE COURT: Or, can we just go off the record a  
7 second with respect to schedules so that I can -- I just don't  
8 want all this on the record.

9 (Whereupon at 2:46 p.m. the Court went off the record  
10 in the hearing in this matter.)

11 (Whereupon at 2:49 p.m. the hearing in this matter  
12 went back on the record and the following proceedings were  
13 had:)

14 THE COURT: All right, let's go back on the record  
15 then. All right, the briefs are due by July 12th; is that what  
16 you've decided? With hard copies sent to Mr. Bernick's New  
17 York office by July 13th, and then they'll be delivered to me  
18 by Mr. Bernick, somebody on his behalf, on July 14th.

19 MR. BERNICK: I think that I'm getting the sense from  
20 my brethren's vibrations over here, why don't we make them due  
on 13th at noon.

21 THE COURT: All right.

22 MR. BERNICK: Hard copies to be in our office by 5  
23 o'clock, and we'll get them shipped off to you.

24 THE COURT: Okay, that's fine, and if you'll see me  
25 after this over, I'll give you the address where they can be

1 delivered.

2 MR. FRANKEL: Your Honor, just so we're clear, the  
3 business report that we talked about earlier is still due on  
4 the 7th but reply by the 12th.

5 THE COURT: Right, that's correct. And then the  
6 briefs are due the 13th with paper copies to me on the 14th.

7 MR. BAENA: And what we file on the 12th, we don't  
8 have to make any special arrangements to deliver to you, Judge,  
9 we just file it with the court?

10 MR. BERNICK: What are you planning to file?

11 MR. BAENA: A response.

12 THE COURT: Any responses to your business report.  
13 Would you do the same thing, make sure that Mr. Bernick's New  
14 York office has a copy by 5 p.m. on the 13th, and they can be  
15 delivered to me too, just in case. I should have e-mail access  
16 on the 12th, but just in case I don't. That would be a fail-  
17 safe.

18 MR. BAENA: Okay.

19 THE COURT: All right, what else for today? All  
20 right, if the debtor wants to submit an order that extends  
21 exclusivity through that hearing on July 19th, I'll sign it,  
22 otherwise this is the order, it is in effect, and debtor's  
23 exclusivity is extended through that time with a corresponding  
24 extension to solicit ballots for a month after whenever it  
25 currently ends. Okay. Oh, the 2019 amendment; have you see

1 the orders that I entered in the Pittsburgh cases?

2 MS. BAER: Yes, Your Honor.

3 THE COURT: Are they agreeable now?

4 MS. BAER: Yes, they are.

5 THE COURT: Will you submit one, please, in this case  
6 on a COC. Link it to the prior 2019 order so I can get it  
7 entered, and that can take effect too.

8 MS. BAER: We will.

9 THE COURT: All right, thank you. All right, any  
10 other matters? Okay we're adjourned, thank you.

11 (Whereupon at 2:51 p.m. the hearing in this matter  
12 was concluded for this date.)

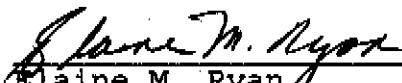
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16 I, Elaine M. Ryan, approved transcriber for the  
17 United States Courts, certify that the foregoing is a correct  
18 transcript from the electronic sound recording of the  
19 proceedings in the above-entitled matter.

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